

IN Pursuance of an Order of the HOUSE of PEERS, of the First Day of *August* 1746, I do appoint SAMUEL BILLINGSLEY to Print the whole Proceedings in the House of Peers, upon the Indictments against *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, for High Treason, in Levying War against his Majesty; And do forbid any other Person to Print the same.

Hardwicke C.

Earl of Kilmarnock, *Aged 42.*

Lord Balmerino, *Aged 58.*



THE EFFIGIES
of the late
EARL of KILMARNOCK, and the late LORD BALMERINO,
who were beheaded on Tower Hill
the 18.th of August 1746.

Printed according to Act of Parliament.

Price 1^s.

K. Boyd (M) Early Kilmurrah

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THE WHOLE
PROCEEDINGS
IN THE
HOUSE of PEERS,
UPON THE
INDICTMENTS
AGAINST

*William Earl of Kilmarnock,
George Earl of Cromertie, and
Arthur Lord Balmerino;*

FOR
HIGH TREASON,

In Levying War against His MAJESTY:

The PROCEEDING in *Westminster Hall* being begun
on *Monday* the 28th Day of *July*, and continued on *Wednesday* the
30th of *July*, and *Friday* the First of *August*, 1746: On the last of
which Days Judgment of HIGH TREASON was given against them.

Published by Order of the HOUSE of PEERS.

L O N D O N :

Printed for SAMUEL BILLINGSLEY, in *Chancery-Lane*.

M, DCC. XLVI.

[Price Two Shillings.]

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 and Arthur Lord Balmerino.*

Die Martis, 24^o Junii, 1746.

THE Duke of *Newcastle*, by His Majesty's Command, acquainted the House, That Bills of Indictment of High Treason were Yesterday found, by the Grand Jury of the County of *Surrey*, against *William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino.*

Ordered, That the said Indictments be removed before this House by *Certiorari*: And that a Writ or Writs of *Certiorari* be issued for that Purpose.

Then a Committee was appointed to inspect the Journals of this House upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring the Lords above named to a speedy Trial: And to report to the House, What they shall think proper thereupon.

Their Lordships, or any Five of them, to meet Tomorrow, at the usual Time and Place; and to adjourn as they please.

Ordered, That the Lord Chief Justice of the Court of King's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, do attend the said Committee.

Die Jovis, 26^o Junii, 1746.

THE House being informed, That the Writ of *Certiorari*, issued for removing the Indictments of High Treason, found by the Grand Jury of *Surrey* against *William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino*, was brought into the House;

The said Writ, Return thereof, and Indictments, were read.

The Lord *Monson* acquainted the House, That the Committee appointed to inspect their Lordships Journals upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring the Lords abovementioned to a speedy Trial; had agreed upon a Report: Which they had directed him to make to the House, when their Lordships will please to receive the same.

Ordered, That the said Report be received Tomorrow; and the Lords to be summoned.

Die Veneris, 27 Junii, 1746.

THE Lord Monson (according to Order) reported, from the Lords Committees appointed to inspect the Journals of this House upon former Trials of Peers in Capital Cafes; and to consider of the proper Methods of Proceeding, in order to bring *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, lately indicted of High Treason, to a speedy Trial; That the Committee have met, and inspected the Journals of this House, in relation to the Trials of Peers in Capital Cafes; and were attended by the Lord Chief Justice of the Court of King's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer: And, having heard the said Judges upon the Construction of the Act of the Seventh and Eighth Year of King *William* the Third, intituled, *An Act for regulating Trials in Cafes of Treason, and Misprision of Treason*, and considered the Matter to them referred, have come to the following Resolutions: *Viz.*

I. That it is the Opinion of this Committee, That, by virtue of the said Act, upon the Trial of any Peer or Peerefs in any of the Cafes of Treason, or Misprision of Treason, within that Act, all the Peers, who have a Right to sit and vote in Parliament, ought to be summoned Twenty Days at least before every such Trial, to appear at such Trial.

II. That it is the Opinion of this Committee, That such Summons ought to be by Order of this House, requiring, That every Peer, who hath a Right to sit and vote in Parliament, do appear at, and attend, such Trial; and by Letters, to be wrote by the Lord Chancellor, or Speaker of the House for the Time being, to each particular Peer: And that such Order of the House be fixed upon the Doors of this House, and of *Westminster-Hall*; and also be published in the *London Gazette*, at least Twenty Days before such Trial; and that such Letters be sent at least Twenty Days before such Trial.

III. That it appearing to this Committee, That the antient and usual Method of summoning the Lords to attend upon Trials of Peers in Capital Cafes, in Parliament, has been, by sending the Letters of Summons, to such Lords as are not in Town, by the Post; it is the Opinion of this Committee, That the Letters, to such Lords as are not in Town, be sent by the Post, according to the antient Usage.

IV. That it is the Opinion of this Committee, That the House be moved to resolve and declare, That such Order, so fixed up and published as abovementioned, and such Letters, so sent as abovementioned, are a due Summons of the Peers in Cafes of Trials during the Sitting of Parliament, within the true Intent and Meaning of the said Act of the Seventh and Eighth of King *William* the Third.

V. That it is the Opinion of this Committee, That every Lord, before he shall sit or vote upon such Trial, ought to take the Oaths, and make and subscribe the Declaration required by Law to be taken and subscribed by Lords, in order to their Sitting and Voting in Parliament.

VI. That it is the Opinion of this Committee, That, in the Letters to be wrote, pursuant to the Resolutions abovementioned, Notice be taken, that the Lords are summoned, pursuant to the said Act of the Seventh and Eighth Year of King *William* the Third; and that their Attendance is required at such Trial, upon Pain of incurring the utmost Displeasure of the House; and that, in case the Lord, to whom any such Letter is directed, shall be incapable of attending, by reason of Sicknes, or other Disability, he do send Two Witnesses to attest the same upon Oath.

Then the said Report was read by the Clerk.

And the Three First Resolutions, being read a Second time, were severally agreed to by the House; and ordered accordingly.

And the Fourth Resolution being read, the House was moved pursuant to the Direction of the Committee.

And thereupon,

Resolved and Declared, That the Order for the Attendance of the Peers, who have a Right to sit and vote in Parliament, fixed up and published as abovementioned, and such Letters wrote by the Lord Chancellor, or Speaker of this House, and sent as aforesaid, are a due Summons of the Peers in Cafes of Trials during the Sitting of Parliament, within the true Intent and Meaning of the said Act of the Seventh and Eighth Year of King *William* the Third.

Then the Two last Resolutions, being read a Second time, were severally agreed to by the House; and ordered accordingly.

Ordered, That *William Earl of Kilmarnock* be tried on *Monday* the Twenty-eighth of *July* next, at Nine of the Clock in the Morning, upon the Bill of Indictment for High Treason found against him: And that *George Earl of Cromertie* be tried on the same Day, at Ten of the Clock in the Forenoon, upon the Bill of Indictment for High Treason found against him: And that *Arthur Lord Balmerino* be tried on the same Day, at Eleven of the Clock in the Forenoon, upon the Bill of Indictment for High Treason found against him.

Ordered, That the Trials of the said Peers be had in *Westminster Hall*.

Ordered, That an humble Address be presented to his Majesty, to acquaint his Majesty, That this House hath appointed the Trials of *William Earl of Kilmarnock*, *George Earl of Cromertie*, and *Arthur Lord Balmerino*, to begin, in *Westminster Hall*, on *Monday* the Twenty-eighth Day of *July* next; and humbly to desire, That his Majesty will be graciously pleased to give Orders, That a Place be prepared in the said Hall for the said Trials; and also to appoint a Lord High Steward, to continue during the said Trials.

Ordered, That the said Address be presented to his Majesty by the Lords with White Staves.

Ordered, That every Peer, who hath a Right to sit and vote in Parliament, do appear at, and attend, the said Trials: And that this Order be affixed on the Doors of this House, and of *Westminster Hall*; and also be printed and published in the *London Gazette*, at least Twenty Days before the said Trials.

Ordered, That the Lord Chancellor do write Letters to all the Peers, requiring their Appearance and Attendance at the said Trials, pursuant to the Directions contained in the foregoing Report.

Die Lunæ, 30^o Junii, 1746.

THE Lord Chamberlain reported, That the Lords with White Staves had, according to Order, presented to his Majesty the Address of this House Yesterday, for a Place to be prepared in *Westminster-Hall*, for the Trials of the Peers indicted of High Treason, and for the Appointment of a Lord High Steward: And that his Majesty was pleased to say, He would give Orders accordingly.

Die Lunæ, 7^o Julii, 1746.

UPON reading the Petition of *William Earl of Kilmarnock*, now a Prisoner in the Tower of London, praying, in regard he has Notice given him, that his Trial is appointed upon the Twenty-eighth Day of this present *July*, That their Lordships will please to appoint Mr. *George Ross* to be his Solicitor;

It is Ordered, That the said *George Ross* be assigned Solicitor for the Petitioner, as desired; and that he may have Access to him at all seasonable Times.

Upon reading the Petition of *George Earl of Cromertie*, now a Prisoner in the Tower of London, praying, That this House will be pleased to appoint Mr. *Adam Gordon*, Attorney at Law, to be his Solicitor;

It is Ordered, That the said *Adam Gordon* be assigned Solicitor for the Petitioner, as desired; and that he may have Access to him at all seasonable Times.

Die Martis, 8^o Julii, 1746.

THE Lord Monson reported from the Lords Committees appointed to inspect the Journals of this House, upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring *William Earl of Kilmarnock*, *George Earl of Cromertie*, and *Arthur Lord Balmerino*, lately indicted of High Treason, to a speedy Trial, That they had again met, and taken into further Consideration the Matter to them referred; and were come to the following Resolutions; viz.

That it is the Opinion of the Committee, That all the Lords, who shall attend the said Trials, do attend the House, to take the Oaths, in order to their Sitting and Voting upon such Trials, on the *Thursday* and *Friday* next preceding the Day appointed for the said Trials.

That it is the Opinion of the Committee, That the said Resolution be printed and published in the *London Gazette*.

Which, being read twice by the Clerk, were agreed to by the House; and ordered accordingly.

Die Mercurii, 9^o Julii, 1746.

UPON reading the Petition of *Arthur Lord Balmerino*, now a Prisoner in the Tower of London, praying, That this House will appoint Mr. *George Ross* to be his Solicitor;

It is Ordered, That the said *George Ross* be assigned Solicitor for the Petitioner, as desired; and that he may have Access to him at all seasonable Times.

Die

Die Veneris, 11^o Julii, 1746.

ON a Report made by the Lord *Monson*, from the Committee beforementioned :

Ordered, That the Lord High Steward be directed to acquaint the Lords to be tried, and all other Persons, who may have Occasion to speak to the Court, that they address themselves to the Lords in general, and not to the Lord High Steward.

Die Martis, 15^o Julii, 1746.

UPON reading the Petition of *George Earl of Cromertie*, now a Prisoner in the *Tower*, praying, in regard he is informed, several Resolutions have been agreed to by this House, in order to the speedy Trials of the Petitioner, and others, that he may have Copies thereof, the Indictment found against him, the *Certiorari* for removing the same, and the Return thereof, or any other Proceedings that shall be agreed upon in relation to his Trial ;

Ordered, That the Petitioner may have Copies of such Proceedings as have been had in this House concerning him ; together with a Copy of the said Indictment, *Certiorari*, and Return, as desired.

Die Mercurii, 23^o Julii, 1746.

Ordered, That the Constable of his Majesty's *Tower of London*, or the Lieutenant of the same, or his Deputy, do bring to the Bar of this House in *Westminster Hall*, on *Monday* next, at Nine of the Clock in the Morning, the Bodies of *William Earl of Kilmarnock*, *George Earl of Cromertie*, and *Arthur Lord Balmerino*, now in his Custody ; together with Copies of their respective Commitments, signed by the said Constable or Lieutenant.

Die Jovis, 24^o Julii, 1746.

THE Lord *Monson* reported, from the Lords Committees appointed to inspect the Journals of this House upon former Trials of Peers in capital Cases ; and to consider of the proper Methods of Proceeding in order to the Trials of *William Earl of Kilmarnock*, *George Earl of Cromertie*, and *Arthur Lord Balmerino*, lately indicted of High Treason ; That the Committee have taken into further Consideration the Matter to them referred ; and have come to the following Resolutions (amongst others) ; viz.

That it is the Opinion of the Committee, That all Proclamations to be made in the Court in *Westminster Hall*, during the said Trials, be made in the King's Name.

That it is the Opinion of the Committee, That the Three Lords, indicted of High Treason, be brought to the Bar of the Court in *Westminster Hall* at the same time, in order to be arraigned.

That it is the Opinion of the Committee, That in case the Three Lords, indicted of High Treason, should plead Guilty to their Indictments, the House be immediately adjourned to the Chamber of Parliament ; but if one or more of the said Lords should plead Guilty, and the other Not guilty, in that case, the Lord or Lords so pleading Guilty be forthwith remanded, in Custody of the Chief Governor of the *Tower of London*, to the said *Tower* ; and that the Trial of the other Lord or Lords pleading Not guilty do proceed.

Which Report, being read twice by the Clerk, was agreed to by the House ; and ordered accordingly.

Die Lunæ, 28 Julii, 1746.

THE Lords met in the House of Lords in their Robes ; and, after Prayers, adjourned into *Westminster Hall*.

The First Day in Westminster-Hall.

ABOUT Eleven of the Clock, the Lords came from their own House into the Court erected in *Westminster Hall*, in the Manner following :

The Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Assistant to the House of Lords ; and the Clerk of the Parliament.

Clerk of the Crown in Chancery, bearing the King's Commission to the Lord High Steward ; and the Clerk of the Crown in the King's-Bench.

The Masters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldest Sons, Two and Two.

Peers Minors, Two and Two.

York and Windsor Heralds.

Four Serjeants at Arms with their Maces, Two and Two.

The Yeoman Usher of the House.

Then the Peers, Two and Two, beginning with the youngest Baron.

Then Four Serjeants at Arms with their Maces, Two and Two.

The Serjeant at Arms attending the Great Seal, and Purse-Bearer.

Then *Garter* King at Arms, and the Gentleman Usher of the Black Rod, carrying the White Staff before the Lord High-Steward.

Philip Lord *Hardwicke*, Lord High Chancellor of *Great Britain*, Lord High Steward, alone; his Train borne.

When the Lords were placed in their proper Seats, and the Lord High Steward upon the Wool-Pack;

The Clerk of the Crown in Chancery having his Majesty's Commission to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench standing before the Clerk's Table with their Faces towards the State, made Three Reverences; the First at the Table, the Second in the Midway, and the Third near the Wool-Pack; then kneeled down; and the Clerk of the Crown in Chancery, on his Knee, presented the Commission to the Lord High Steward, who delivered the same to the Clerk of the Crown in the King's Bench to read: Then rising, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence; in this Manner:

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up, uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up uncovered, while the Commission was read.

GEORGE R.

GEORGE the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth. To our Right Trusty and Wellbeloved Counsellor *Philip* Lord *Hardwicke*, Baron of *Hardwicke*, in Our County of *Gloucester*, Our Chancellor of *Great Britain*, Greeting. Know ye, That whereas *William* Earl of *Kilmarnock*, late of the City of *Carlisle*, in our County of *Cumberland*; *George* Earl of *Cromertie*, late of the Town of *Perth*, in the Shire of *Perth*; and *Arthur* Lord *Balmerino*, late of the said City of *Carlisle*, in Our said County of *Cumberland*; stand severally indicted before Our Justices and Commissioners, assigned and constituted by Our Letters Patent under Our Great Seal of *Great Britain*, bearing Date the Fifth Day of *June*, in the Nineteenth Year of Our Reign, by virtue and according to the Form of the Statute, made in this Our present Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied, or shall levy, War against His Majesty; and for the better ascertaining the Qualifications of Jurors in Trials for High Treason, or Misprision of Treason, in that Part of Great Britain called Scotland*; made to them, and to any Three or more of them; to deliver Our Gaol of Our County of *Surry* of the Prisoners therein being, or such as shall or may be detained in the same, on or before the First Day of *January*, in the Year of our Lord One thousand Seven hundred and Forty-six, for or on Account of the High Treason mentioned in the said Act, in levying War against Us within this Realm; and to inquire, by the Oath of good and lawful Men of the same County, of all such High Treasons, in levying War against Us within this Realm by the said Prisoners, or any of them, or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be guilty of High Treason, in levying War against Us within this Realm, and shall be apprehended and imprisoned for the same, on or before the said First Day of *January*, in the said Year of our Lord One thousand Seven hundred and Forty-six; and the same Treasons to hear and determine, according to the Form of the said Statute, by the Oath of Twelve Jurors, good and lawful Men of the said County of *Surry*, of High Treason, by them the said *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, committed and perpetrated in levying War against Us within this Realm; and considering, that Justice is an excellent Virtue, and pleasing to the Most High; and being willing that the said *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, should be heard, examined, sentenced and adjudged before Us, in this Our present Parliament, touching and concerning the said High Treason whereof they stand severally indicted as aforesaid; and that all other Things which are necessary in this behalf, should be in due Manner done and executed; and for that the Office of Steward of *Great Britain* (whose Presence is required upon this Occasion) is now vacant (as We are informed); We, very much confiding in your Fidelity,

C

Prudence,

Prudence, provident Circumspection, and Industry, have for this Cause ordained and constituted you Steward of *Great Britain*, to bear, execute and exercise (for this Time) the said Office, with all Things due and belonging to the same Office in this behalf: And therefore We command you, that you diligently set about the Premises, and (for this Time) do exercise, and execute with Effect, all those Things which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these Our Letters to be made Patent. Witness Ourself at *Westminster*, the Twenty-eighth Day of *July*, in the Twentieth Year of Our Reign.

By the King Himself, signed with his own Hand.

Bisse.

Serjeant at Arms. God save the King.

Then Garter, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by Garter, Black Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Wool-Pack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes. Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof; together with the Captions of the Indictments, and the Indictments certified thereupon, against the Earl of *Kilmarnock*, the Earl of *Cromertie*, and the Lord *Balmerino*; *in hæc verba*:

The *Certiorari* } **G** E O R G E the Second, by the Grace of God, of *Great Britain*, *France*, and
and *Return.* } *Ireland*, King, Defender of the Faith, To Our Justices and Commissioners,
assigned and constituted by Our Letters Patent under Our Great Seal of
Great Britain, made to them, and to any Three or more of them, to deliver Our Gaol of Our
County of *Surry* of the Prisoners therein being, or such as shall or may be detained in the same, on
or before the First Day of *January*, in the Year of our Lord One thousand Seven hundred and
Forty-six, for or on Account of the High Treason mentioned in the Statute made in this Our pre-
sent Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied,*
or shall levy, War against his Majesty; and for the better ascertaining the Qualifications of Jurors
in Trials for High Treason, or Misprison of Treason, in that Part of Great Britain called Scotland,
in levying War against Us within this Realm; and to inquire, by the Oath of good and lawful
Men of the same County, of all such High Treasons, in levying War against Us within this
Realm, by the said Prisoners, or any of them, or by any other Person or Persons who are now in
actual Custody for or on Account of the same, or who are or shall be guilty of High Treason, in
levying War against Us within this Realm, and shall be apprehended and imprisoned for the
same, on or before the said First Day of *January*, in the said Year of our Lord One thousand Seven
hundred and Forty-six, and the same Treasons to hear and determine, according to the Form of
the said Statute, and to every of them, Greeting. We command you, and every of you, that
all and singular Indictments for High Treason, in levying War against Us within this Realm,
whereof *William* Earl of *Kilmarnock*, late of the City of *Carlisle*, in the County of *Cumberland*;
Arthur Lord *Balmerino*, late of the same Place; and *George* Earl of *Cromertie*, late of the Town
of *Pertb*, in the Shire of *Pertb*; stand severally indicted before you in our said County of *Surry*;
which said Indictments now remain in your Power, or in the Power of some or one of you; with
all Things touching the same, as fully and perfectly as the same were taken before you, by what
Names, Stiles or Titles soever the said *William* Earl of *Kilmarnock*, *Arthur* Lord *Balmerino*, and
George Earl of *Cromertie*, may be called or distinguished in the same, you do, without Delay,
deliver, under your Seals, or the Seals or Seal of some or one of you, to Us, in this Our present
Parliament, together with this Writ. Witness Ourself at *Westminster*, the Twenty-fifth Day of
June, in the Twentieth Year of Our Reign.

Bisse.

Return. } **B** Y virtue of this Writ to us, and others, our Fellows, directed, we do deliver the
within mentioned Indictments for High Treason; whereof the within named *Wil-*
liam Earl of *Kilmarnock*, *Arthur* Lord *Balmerino*, and *George* Earl of *Cromertie*, stand severally in-
dicted; which said Indictments lately remained before us, and others our Fellows, but are now
annexed to this Writ, with all Things touching the same, as fully and perfectly as the same were
lately taken before us, and others our Fellows; to our present Sovereign Lord the King, in this
present

present Parliament; together with this Writ, according to the Form of the said Writ, as we are within commanded.

The Answer of Sir *William Lee*, Knight; Sir *John Willes*, Knight; and Sir *Thomas Parker*, Knight; Three of the Justices and Commissioners within mentioned.

W. Lee.

J. Willes.

T. Parker.

Surry. **B**E it Remembered, That at a Special Session of Oyer and Terminer, and Gaol delivery, of our Sovereign Lord the King, of and for the County of *Surry*, holden at the Borough of *Southwark*, in the said County, on *Monday* the Twenty-third Day of *June*, in the Twentieth Year of the Reign of our said present Sovereign Lord *George* the Second, by the Grace of God of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, before Sir *William Lee*, Knight, Chief Justice of our said present Sovereign Lord the King, appointed to hold Pleas before the King himself; Sir *John Willes*, Knight, Chief Justice of the Court of Common Pleas; Sir *Martin Wright*, Knight, one of the Justices appointed to hold Pleas before the King himself; Sir *James Reynolds*, Knight, one of the Barons of the Court of Exchequer; Sir *Thomas Abney*, Knight, one of the Justices of the said Court of Common Pleas; Sir *Thomas Burnet*, Knight, one other of the Justices of the said Court of Common Pleas; *Charles Clarke*, Esquire, one other of the Barons of the said Court of Exchequer; *Edward Clive*, Esquire, one other of the Barons of the said Court of Exchequer; Sir *Thomas Deveil*, Knight, and *Peter Theobald*, Esquire, and others their Fellows, Justices, and Commissioners of our said present Sovereign Lord the King, assigned by Letters Patent of our said present Sovereign Lord the King, under his Great Seal of *Great-Britain*, made by virtue of the Statute made in this present Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied, or shall levy, War against his Majesty, and for the better ascertaining the Qualifications of Jurors in Trials for High Treason, or Misprision of Treason, in that Part of Great-Britain called Scotland*, to the said Justices and Commissioners above named, and others, and to any Three or more of them (of whom our said present Sovereign Lord the King willed, That any of them the said Sir *William Lee*, Sir *John Willes*, Sir *Martin Wright*, Sir *James Reynolds*, Sir *Thomas Abney*, Sir *Thomas Burnet*, *Charles Clarke*, *Edward Clive*, and Sir *Thomas Deveil*, and others, in the same Letters Patent named and appointed, should be one) to deliver the Gaol of the said County of the Prisoners therein being, or such as shall or may be detained in the same on or before the First Day of *January*, in the Year of our Lord 1746, for or on Account of the High Treason mentioned in the said Statute, in levying War against our said present Sovereign Lord the King within this Realm; and to inquire, by the Oath of good and lawful Men of the same County, of all such High Treasons in levying War against our said present Sovereign Lord the King, within this Realm, by the said Prisoners, or any of them; or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be Guilty of High Treason, in levying War against our said present Sovereign Lord the King, within this Realm, and shall be apprehended and imprisoned for the same on or before the said First Day of *January*, in the said Year of our Lord 1746; and the same High Treasons to hear and determine according to the Form of the said Statute, by the Oath of Sir *William Richardson*, of *Bermondsey*, Knight; Sir *Abraham Shard*, of *Kenington*, Knight; Sir *Thomas Hankey*, of *Clapham*, Knight; Sir *Peter Thompson*, of *Bermondsey*, Knight; *Josias Wordsworth*, of *Adcombe*, Esquire; *Percival Lewis*, of *Putney*, Esquire; *Samuel Atkinson*, of *Croydon*, Esquire; *John Copeland*, of *Camberwell*, Esquire; *Charles Hoskins*, of *Croydon*, Esquire; *Joseph Creswick*, of *Stretham*, Esquire; *William Clarke*, of *Southwarke*, Esquire; *Joseph Willoughby*, of *Croydon*, Esquire; *Thomas Bevois*, of *Bermondsey*, Esquire; *Elias Bird*, of *Rotherbith*, Esquire; *Thomas Tarrant*, of *Southwarke*, Esquire; *Edward Steavens*, of *Southwarke*, Esquire; *Henry Robinson*, of *Wandsworth*, Esquire; *John Heathfield*, of *Croydon*, Esquire; *Nathanael Green*, of *Southwarke*, Esquire; *Isaac Eccles*, of *Lambeth*, Esquire; *John Smith*, of *Lambeth*, Esquire; *Hammett Richardson*, of *Bermondsey*, Esquire; and *Samuel Nicholson*, of *Croydon*, Esquire; good and lawful Men of the said County, being then and there sworn, and charged to inquire for our said present Sovereign Lord the King, touching and concerning the Premises in the said Letters Patent mentioned; it is presented, that the Bill of Indictment, to this Schedule annexed, is a true Bill.

Surry. **T**HE Jurors for our present Sovereign Lord the King, upon their Oath, present, That *William* Earl of *Kilmarnock*, late of the City of *Carlisle*, in the County of *Cumberland*, being a Subject of our said present most Serene Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, and not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, as a false Traitor and

and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, entirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right ought to, bear towards our said present Sovereign Lord the King; and also devising, and, as much as in him lay, most wickedly and traiterously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King; and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom; and also to put and bring our said present Sovereign Lord the King to Death, and final Destruction; and to raise and exalt the Person pretended to be Prince of *Wales* during the Life of *James* the Second, late King of *England*, and so forth, and, since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the Tenth Day of *November*, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of *Carlisle* aforesaid, in the County of *Cumberland* aforesaid, with a great Multitude of Traitors and Rebels against our said present Sovereign Lord the King, to wit, To the Number of Three thousand Persons, whose Names are as yet unknown to the said Jurors, being armed and arrayed in a warlike and hostile Manner, *to wit*, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms did falsely and traiterously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsely and traiterously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traiterous Intentions and Purposes aforesaid, did falsely and traiterously prepare, order, wage, and levy, a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms did, with the said Traitors and Rebels so assembled, armed, and arrayed, as aforesaid, falsely and traiterously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said City of *Carlisle*, and the Castle thereto belonging within the same City (the said City and Castle being a City and Castle of our said present Sovereign Lord the King); and the said City and Castle, with Force and Arms, then and there did falsely and traiterously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, *David Gray,*
John Vere,
James Berclay,

Hugh Douglass,
Samuel Maddock,
Charles Campbell, Esquire.
Sworn in Court.

A true Bill.

The Caption of the Indictment against *George* Earl of *Cromertie* was read, in the like Form as that against *William* Earl of *Kilmarnock*; and then followed the Indictment; *viz.*

Surry. } **T**HE Jurors for our present Sovereign Lord the King, upon their Oath, present, That *George* Earl of *Cromertie*, late of the Town of *Pertb* in the Shire of *Pertb*, being a Subject of our said present most Serene Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, intirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right ought to bear towards our said present Sovereign Lord the King; and also devising, and, as much as in him lay, most wickedly and traiterously intending, to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King, and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom, and also to put and bring our said present Sovereign Lord the King to Death and final Destruction, and to raise and exalt the Person pretended to be Prince of *Wales*, during the Life of *James* the Second, late King of *England*, and so forth, and, since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of, King of *England*, by the Name

Name of *James* the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the First Day of *December*, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the Town of *Perth* aforesaid, in the Shire of *Perth* aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King; to wit, to the Number of a Thousand Persons, whose Names are, as yet, unknown to the said Jurors, being armed, and arrayed in a warlike and hostile Manner; to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsely and traiterously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsely and traiterously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in pursuance and Execution of such his wicked and traiterous Intentions and Purposes aforesaid, did falsely and traiterously prepare, order, wage, and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms, did, with the said Traitors and Rebels, so assembled, armed, and arrayed, as aforesaid, falsely and traiterously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said Town of *Perth* (the said Town of *Perth* being a Town of our said present Sovereign Lord the King) and the said Town of *Perth*, with Force and Arms, then and there did falsely and traiterously possess, hold, keep, maintain, and defend against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, *Hugh Ross,*
David Gray,
John M'Kay,
James Logie.

A true Bill.

Sworn in Court.

The Caption of the Indictment against *Arthur* Lord *Balmerino* was read in the like Form as that against *William* Earl of *Kilmarnock*; and then followed the Indictment; viz.

Surry. } **T**HE Jurors for our present Sovereign Lord the King, upon their Oath, present, That *Arthur* Lord *Balmerino*, late of the City of *Carlisle* in the County of *Cumberland*, being a Subject of our said present most Serene Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, intirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and, of Right, ought to bear towards our said present Sovereign Lord the King; and also devising (as much as in him lay) most wickedly and traiterously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King; and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom; and also to put and bring our said present Sovereign Lord the King to Death and final Destruction; and to raise and exalt the Person pretended to be Prince of *Wales*, during the Life of *James* the Second, late King of *England*, and so forth, and, since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the Tenth Day of *November*, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of *Carlisle* aforesaid, in the County of *Cumberland* aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King; to wit, to the Number of Three thousand Persons (whose Names are, as yet, unknown to the said Jurors) being armed, and arrayed in a warlike and hostile Manner; to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsely and traiterously, assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsely and traiterously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traiterous Intentions and Purposes aforesaid, did falsely

and traiterously prepare, order, wage, and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms, did, with the said Traitors and Rebels, so assembled, armed, and arrayed, as aforesaid, falsly and traiterously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said City of *Carlisle*, and the Castle thereto belonging within the same City (the said City and Castle being a City and Castle of our said present Sovereign Lord the King), and the said City and Castle, with Force and Arms, then and there did falsly and traiterously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses,

*Hugh Douglass,
John Vere,
James Berclay,
David Gray,
James Logie.*

A true Bill.

Sworn in Court.

Lord High Steward. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, Ay.

Clerk of the Crown. Serjeant at Arms, Make Proclamation for the Lieutenant of the *Tower* to bring his Prisoners to the Bar.

Serjeant at Arms. Oyes, Oyes, Oyes. Lieutenant of the *Tower* of *London*, Bring forth your Prisoners *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, to the Bar, together with Copies of their respective Commitments, pursuant to the Order of the House of Lords.

Then *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, were all brought to the Bar, by the Deputy-Governor of the *Tower*, having the Ax carried before them by the Gentleman-Gaoler, who stood, with it, on the Left Hand of the Prisoners, with the Edge turned from them. The Prisoners, when they approached the Bar, made Three Reverences; and then fell upon their Knees at the Bar. The Deputy-Governor of the *Tower* also delivered in the Copy of the Commitment.

Lord High Steward. Your Lordships may rise.

Then the Prisoners rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers; which Compliment was returned them by his Grace, and the Lords.

Lord High Steward. Let the Copy of the Commitment be read.

Which was read, as follows:

Thomas Holles, Duke of *Newcastle*, Marquis and Earl of *Clare*, Viscount *Haughton*, Baron *Pelham* of *Laughton*, Knight of the most Noble Order of the Garter, one of the Lords of his Majesty's most Honourable Privy Council, and Principal Secretary of State, &c.

THESE are, in his Majesty's Name, to authorize and require you to receive into your Custody the Bodies of *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, herewith sent you, for High Treason, in levying War against his Majesty; and to keep them safe and close, until they shall be delivered by due Course of Law: And, for so doing, this shall be your Warrant. Given at *Whitehall*, the Twenty-seventh Day of *May* 1746, in the Nineteenth Year of his Majesty's Reign.

HOLLES NEWCASTLE.

To the Right Honourable the Lord *Cornwallis*, Constable of his Majesty's *Tower* of *London*, and, in his Absence, to the Lieutenant of the said *Tower*, or his Deputy.

This is a true Copy of the original Warrant.

CORNWALLIS.

Then Proclamation having been again made for Silence, the Lord High Steward spake to the Prisoners, as follows:

Lord High Steward. *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, *Arthur* Lord *Balmerino*, Your Lordships are brought before the most august Judicature in this Kingdom, in order to receive your several Trials, upon different Charges of High Treason against you, returned before this House.

As

As the Crimes, whereof you stand accused, are of the most heinous Nature, so the Accusations against you are grounded upon no slight Foundations. They are no less than Indictments for levying War, and raising a Rebellion against his Majesty, found by a Grand Jury of Gentlemen, of great Worth and Consideration, in the County of *Surry*, upon Evidence produced before them.

But though your Charge is thus weighty and solemn, it is still but a Charge, and open to all such Defences, as the Circumstances of your several Cases, and the Rules of Law and Justice, will admit.

The Law is the solid Basis and Support of the King's Throne : It is the great Bulwark of the Property, the Liberty, and Life of every Subject ; and it is the Security of the Privileges and Honours of the Peerage. By this Measure, which is uniform, and equal to every Member of the Community, your Actions, which are now called in Question, are this Day to be examined and judged.

If your Lordships are innocent, this will be one Ground of a reasonable Confidence, in your present unhappy Circumstances : But, to this Consideration, your own Thoughts cannot fail to add another ; I mean, that the Rules of this Law are to be expounded and dispensed to you by this illustrious Assembly, the whole Body of the Peers of *Great Britain*, in whose noble and discerning Minds, nothing can have Weight but Evidence and Justice: Guilt alone can take place against you, and Innocence alone can acquit you.

Your first Consideration will be, What Pleas to put in to these Indictments : If your Lordships shall put yourselves upon your Trials, you may rest assured, from the Motives I have already mentioned, that they will be legal, fair, and impartial ; and, as you stand here to answer for your Estates, your Lives, your Honours, and your Posterity, it is incumbent upon you to recollect yourselves, and to call up all those Succours of Reason, Discretion, and Temper, which you are Masters of.

There is a Circumstance, in your Case, which is new, and makes it unnecessary for me to say much, by way of Admonition, concerning your Defence : Your Lordships are the first of your Rank and Quality, who have been brought to Trial, upon Indictments for High Treason, since the Act made in the Reign of our great Deliverer King *William* the Third, for Regulating of Trials in Cases of High Treason, and Misprision of Treason.

It has been the peculiar Happiness of this Nation, since the Revolution, that our Princes have had that Confidence in the Affections of their People, and the Interests of both are become so evidently the same, that the Regal Sanction has, since that Period, been graciously granted to Laws, for the Security of the Subject, which were in vain wished for in former Reigns.

However injuriously that Revolution has been traduced, whatever Attempts have been made to subvert this happy Establishment founded upon it, your Lordships will now have the Benefit of that Law in its full Extent.

Before I conclude, I am, by Command of the House, to acquaint your Lordships, and all other Persons who shall have Occasion to speak to the Court, during these Trials, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Lord High Steward. Your Lordships will do well to give Attention, while you are severally arraigned upon your Indictments.

Here the Earl of *Kilmarnock* was arraigned, in the Form of the said Indictment against him, by the Clerk of the Crown in the King's Bench.

Clerk of the Crown. How say you, *William* Earl of *Kilmarnock*, Are you guilty of this High Treason whereof you stand indicted, or not guilty ?

Earl of Kilmarnock. Guilty.

Lord High Steward. The Distance I am at from the Bar is so great, that I am not sure whether I heard your Lordship right ; and therefore desire to ask you, Whether you plead guilty, or not guilty ?

Earl of Kilmarnock. Guilty, my Lords.

George Earl of *Cromertie* was arraigned in the same Manner, upon the said Indictment against him.

Clerk of the Crown. How say you, *George* Earl of *Cromertie*, Are you guilty of this High Treason whereof you stand indicted, or not guilty ?

Earl of Cromertie. Guilty.

Lord High Steward. Not perfectly hearing your Lordship's Answer, I must give you the same Trouble as I did the Earl of *Kilmarnock*, by asking your Lordship the same Question, Whether you plead guilty, or not guilty.

Earl of Cromertie. Guilty, my Lords.

Arthur Lord Balmerino was arraigned in the same Manner, upon the said Indictment against him.

Clerk of the Crown. How say you, *Arthur Lord Balmerino*, Are you guilty of this High Treason whereof you stand indicted, or not guilty?

Lord Balmerino. Will your Lordships be pleased to hear me, and I will be very short: I have only Two or Three Words to say: I will not take up your Time, my Lords.

Lord High Steward. Your Lordship is now arraigned; and the Indictment has been read to you: Now is your Time to plead.

Lord Balmerino. If I should plead guilty, there is no occasion to speak after that.

Lord High Steward. This is not a proper Time to speak to other Matters. It is my Duty to inform your Lordship of the Rules of Law, and Methods of Proceeding; which require, that you should first plead to the Indictment.

Lord Balmerino. Then, my Lords, you will oblige me to take up more of your Lordships Time than I intended; for I cannot plead guilty. I desire to be heard: I will not take up your Lordships Time. I want an Answer to one Question, and then I will plead.

Lord High Steward. If your Lordship has any thing material, you may mention it.

Lord Balmerino. My Lords, If there be any Fault in the Form of the Indictment, or if it is so faulty, that no Judgment can be given upon it, I want to know, Whether I can be indicted again.

Lord High Steward. If your Lordship has any Exception to take to the Indictment for Mis-writing, Mis-spelling, or any Informality of that Nature, now is your proper Time to offer such Exceptions.

Lord Balmerino. My Lords, I am indicted by the Title of *Lord Balmerino*, of the City of *Carlisle*; and, I am sure, that is no Title belonging to me: And I am indicted for being at the Taking of his Majesty's City and Castle of *Carlisle* on the Tenth of *November*; and I can prove, that, at that Time, I was not within Twelve Miles of it: Now, my Lords, Will that be of any Use to me? I can prove I was Twelve Miles off, when they say I was at *Carlisle*.

Clerk of the Crown. Serjeant at Arms, make Proclamation for Silence.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King doth strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Lord High Steward. My Lord *Balmerino*, you have made Two Objections of different Natures; the first of them is to the Addition of Place given to you in this Indictment; and the other goes to the Fact thereby charged upon you. As to the First, I must inform your Lordship, that the Words *late of the City of Carlisle, in the County of Cumberland*, are not made Part of your Title, but are only an Addition of Place, which the Law, for good Reasons, requires to be inserted by way of Description of the Defendant in all Indictments; and it is most commonly taken from that Place, where the Crime is by such Indictment charged to have been committed. As to your other Objection, it relates to the Fact alleged in the Indictment, and will depend upon the Evidence; which cannot be entered into, till your Lordship has pleaded.

Lord Balmerino. Then, my Lords, though I could prove I was elsewhere, it would be of no Use to me at all.

Lord High Steward. Your Lordship mistakes me; I do not tell you so; but only, that this your last Objection cannot be taken into Consideration, till after you have pleaded, and the Evidence appears.

Lord Balmerino. I can make it appear, that I was not at *Carlisle* at that Time.

Lord High Steward. I have acquainted your Lordship, according to my Duty, with the Method of Proceeding, and the proper Time for making use of your Objection. It must be left to your Consideration, how far you think it for your Advantage to insist upon it.

Clerk of the Crown. *Arthur Lord Balmerino*, Are you guilty of the High Treason whereof you stand indicted, or not guilty?

Lord Balmerino. Not guilty, my Lords.

Clerk of the Crown. Culprit, How will your Lordship be tried?

Lord Balmerino. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Lord High Steward. Let the Lieutenant of the *Tower* take my Lord *Kilmarnock* and my Lord *Cromertie* from the Bar.

These Two Lords were then taken from the Bar by the Lieutenant of the *Tower*; who returned again, and stood on the Right Hand of *Lord Balmerino*; the Gentleman-Gaoler standing all the time on his Left Hand, with the Ax turned from him.

Clerk

Clerk of the Crown. Serjeant at Arms, Make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes! All manner of Persons, that will give Evidence on behalf of our Sovereign Lord the King, against *Arthur Lord Balmerino*, the Prisoner at the Bar, let them come forth, and they shall be heard; for now he stands at the Bar, upon his Deliverance.

Lord High Steward. My Lords, The Distance of this Place from the Bar is so great, that I must desire your Lordships Leave to go down to the Table, for the Convenience of Hearing.

Lords. Ay, ay.

Then his Grace removed to the Wooll-pack, and delivered the White Staff to be held by the Gentleman Usher of the Black Rod; who, during the whole Trial, always received and delivered back the White Staff upon his Knee.

Sir Richard Lloyd, Council for the King.

May it please your Lordships,

Arthur Lord Balmerino stands indicted, at your Lordships Bar, for High Treason; and the Charge against him, in the Indictment, is, That he being a Subject of our present most Serene Sovereign Lord King *George*, and not having any Regard for the Duty of his Allegiance, as a false Traitor and Rebel against our Sovereign Lord the King, his supreme, true, natural, and lawful Sovereign, and withdrawing that cordial Love, and true and due Obedience, which every Subject of his Majesty should and ought to bear toward him; and wickedly and traiterously devising and intending to change and subvert the Rule and Government of this Kingdom, and to depose and deprive his Majesty of his Title, Honour, and Royal State, and Imperial Rule and Government of these Kingdoms, and to put and bring him to Death and final Destruction, and to raise and exalt the Person pretending to be Prince of *Wales*, during the Life of *James* the Second, and since pretending to be, and taking upon himself the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Imperial Rule and Government of this Kingdom; that he did, upon the Tenth Day of *November*, in the Nineteenth Year of his present Majesty's Reign, at *Carlisle* in the County of *Cumberland*, with a Multitude of Rebels, armed, and arrayed, in a warlike and hostile Manner, with Arms, as well offensive as defensive, assemble themselves together; and then and there did falsly and traiterously array themselves, with Force and Arms, against our said Lord the King; and then and there did levy a publick and cruel War against the King, and make a miserable and cruel Slaughter of his Majesty's Subjects, and, with the said Traitors and Rebels, so armed and arrayed, did enter into, and take Possession of, the said City and Castle of *Carlisle*, the same being a City and Castle of our said Lord the King, and did falsly and traiterously keep and defend the same against our said Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, and against the Form of the Statute in such Case made and provided.

My Lords, to this Indictment he has pleaded, That he is not guilty: It is incumbent upon us, who have the Honour to serve the Crown in this Prosecution, to prove this Guilt upon him; and then nothing remains for us, but to pray your Lordships Judgment accordingly.

Mr. Serjeant Skinner, the King's Serjeant.

My Lords,

I Am Counsel, in this Cause, for the King, against the unfortunate Peer at your Lordships Bar; who stands accused of a Crime, the highest which is known to the Laws of this Realm.

For High Treason comprehends all other Offences: Murder and Rapine accompany, and are closely connected with, High Treason; and Waste, Destruction, and Famine are the Marks it leaves behind.

To be guilty of the lowest of these, as a single Offence, would be abhorrent to a Person of a noble Heart: To be guilty of each of these Offences, is such a Weight of Crime, as would depress and bear down a noble Mind: Yet such is the Case of that unhappy Person, who is guilty of the Crime of High Treason.

I will not bring a railing Accusation against this unfortunate Lord: Indeed, the Offence cannot admit of Aggravation: But, when I consider the inevitable Ruin which must have befallen our Country, if these pernicious Designs had taken their Effect; the total Subversion of our Religious and Civil Liberties; I then cannot help lamenting, that neither high Blood, nor those generous Sentiments of Gratitude and Humanity, which are usually implanted in a noble Breast, that These could not restrain a high-born Peer from engaging in those wicked Councils, the uniting in which is a Stain to his Honour, and will be a Mark of Infamy to his Posterity.

For the most grievous Thought, to this unhappy Lord, must be, That the Consequences of his Crime will affect his Descendants: He was their Root of Honour; he now derives to them Disgrace and Infamy.

But the Law in this proceeds with great Reason and Justice: The Punishment of the guilty Person alone, may not be sufficient to deter Men from the Commission of this Crime: He may be so hardened, as to think his own Suffering to be light; but he may lament for the Fate of his Children and Family: Such likewise were the Laws of Nations the most famed for their Rule and Polity.

In this House, so eminently distinguished for Learning as well as Honour, I want no Apology, when I repeat the Opinion of the great *Roman* Lawyer and Orator, upon this Subject: *Tully* states this as an Objection; and I submit, that he gives an Answer, natural and affecting: His Words are:

Nec verò me fugit, quàm sit acerbum Parentum Scelera Filiorum Pœnis lui; sed hoc præclare Legibus comparatum est; ut Caritas Liberorum amiciores Parentes Reipublicæ redderet.

Rebellion surely is the Sin of Witchcraft; otherwise what can engage a Person in an Attempt to destroy the Religious and Civil Liberties of his Country, tho', in the same Ruin, he thus involves the Fate of himself, and his Posterity? Our Religion is a reasonable Service; its Establishment is the Law of the Land; and for a Protestant Peer to endeavour to extirpate this our most holy Religion, and to introduce Superstition and Idolatry amongst us, is a Proposition as absurd, as Transubstantiation: Our Civil Rights must have fallen a Sacrifice to the Ambition of *France*; for it was a vain Imagination, to think, that *France* would in earnest have set any King over us. Whoever is a *British* King, must, in Time, at least, act upon *British* Principles: From that Moment he is equally an Enemy to *France*, as any of the boldest or best of his Predecessors. *France* knows, and will pursue, her natural Interest: To make us Tributary, to make us Provincial, to destroy us as a Nation, was, and must, and can only, be, the true Design of *France*.

But the Genius of the Nation exerted itself, in the Cause of Liberty, under the Command of his Royal Highness the Duke; and, when we consider our Misfortunes under former Leaders, and how the true *English* Valour prevailed, when animated and influenced by the Presence and Example of so great a Commander, we may justly apply to his Royal Highness what was said of *Scipio*, *Tantus Exercitus, quantus Imperator*.

Before I come to the particular Part, which the Lord at the Bar has acted; it may be necessary to give a short History of this unnatural Rebellion: And here the Names of the Two unfortunate Peers, who have just confessed their Guilt at your Lordships Bar, must often occur.

In *June* 1745, the Son of the Pretender landed in the West Highlands of *Scotland*: Few then were his Company or Followers; but the Cloud, which seemed, at first, to be no larger than a Man's Hand, quickly gathered, and blackened that Part of the Hemisphere. The first who appeared, were the *Mac Donalds* and the *Camerons*, Men famed for Rebellious Acts: They were soon joined by the Duke of *Perth*, the Marquis of *Tullibardine*, Lord *Elcho*, and Lord *George Murray*; and when they came to *Perth* their Number was Five thousand Men; from thence they marched to *Edinburgh*, and there they proclaimed the Pretender; and soon after, *September* the Twenty-first, followed the Battle of *Preston-Pans*. I wish that we could forget the Miscarriages of that Day!

In *October* the Pretender's Son was joined by another Body of Rebels, under the Command of the Earl of *Kilmarnock*: His Lordship made his first Appearance on the Banks of the River which divides *England* from *Scotland*: Here I wish, for the Sake of the Nation, and for his own Sake, that the noble Lord had made some Stop, and had well considered the Enterprize on which he was going: Could he have then foreseen the Calamities, which his rash Undertaking has brought upon his Native Country; could he have then beheld with his Eyes the Rapine, the Violence, and the Oppression, which have ensued; the Opposition of the Son to the Father, of the Brother to the Brother, and how all the Charities of one Man to another were destroyed; could he have foreseen his own shameful Retreat, and final Overthrow; his Feet had never passed the Banks of that River.

From thence they marched into *England*, laid Siege to *Carlisle*, and took it; and here again they proclaimed the Pretender: From thence they went to *Penrith*, and to many other Places in *England*, till they came to *Derby*: In this Town they heard, that his Royal Highness the Duke was advancing towards them. Here Rebellion grew pale; the Fame of the Duke's Approach made them retreat: Their March was expeditious; yet they left behind them so many Marks of their Cruelty and Barbarity, as if their only Design was to plunder and destroy.

His Royal Highness, with a Detachment, pursued the Rebels to *Clifton*; and it is doubtful, whether their Cowardice or Cruelty was here the most remarkable: They fled, and yet, in their Haste, they took Time to murder the King's Soldiers, who lay wounded on the Ground: From hence they got back to *Carlisle*, and from thence proceeded to *Dumfries* and *Glasgow*.

And

And here I must remember the noble Zeal and Firmness which the Magistrates and Citizens of *Glasgow* expressed for their Royal Master, Our most Gracious Sovereign: They paid, indeed, most heavy Exactions for this their Loyalty; which remain like so many Scars; but the Wounds were honourable.

From thence they marched to *Bannockburn*, and so to *Stirling*: Here they were joined by the Earl of *Cromertie*, and then laid Siege to *Stirling Castle*: This occasioned the Battle of *Falkirke*: To this Place the Lord *Balmerino*, the Prisoner at the Bar, marched at the Head of his Regiment: Here the Rebels retired; but Victory was reserved for his Royal Highness. But, before I leave this Field, I must lament the Fate of a valiant Soldier and Commander; wounded, indeed, in the Field of Battle, but afterwards murdered in cold Blood: Let one more Mark of Infamy, at least, be fixed on this Rebellion, for this murderous Act, committed on so worthy and brave a Gentleman.

From *Falkirke* the Rebels retired to *Stirling*; from thence into the Highlands, those Hills of the Robbers: After some time they joined again at *Inverness*; they attacked *Fort George*, then in the Possession of his Majesty's Forces, and took it; they took *Fort Augustus*, and demolished it; before *Fort William* they met with a Repulse: From thence they marched to *Culloden* Field; a bloody Field! where fell Rebellion, I hope, never to rise again. To point out the Conduct, to celebrate the Courage, of his Royal Highness, to paint the Glory of that memorable Day, is an Attempt too bold: The Gratitude of the Nation, the united Thanks of the Parliament, and the Approbation of his Royal Father, shew the Greatness of the Merit by the Richness of the Reward.

My Lords, the particular Circumstances attending the Case of the unfortunate Peer at your Lordships Bar, are considerable: High Treason is an Offence foul and black in itself; it wants no Colouring to make it appear more deformed and hideous: But the Lord *Balmerino* has heightened every Feature of this Deformity: He was, in the Service of the King, a Captain in the Regiment commanded by the Lord *Shannon*; not only therefore by his Oath of Allegiance, as a Subject, but by his Military Oath, as his Majesty's Soldier, as a Soldier trusted by his Sovereign with a Command, he lay under the strongest Obligations to be faithful: But he betrayed this Trust; he deserted his Station, in the which Virtue bid him stand.

As a Reward for his Treachery, the Prisoner, my Lords, was advanced to be the Captain of the Second Troop of Life Guards attending on the Person of the Pretender's Son: We shall shew, that, soon after the City of *Carlisle* surrendered to the Rebels, the Prisoner entered that City at the Head of his Troop, with his Sword drawn, Colours displayed, and Drums beating; he, dressed in the Uniform of the Regiment, with a white Cockade in his Hat: He went the same Progress through the several Places in *England* with the Rebel Army, an Army of Locusts; as they went, they devoured the Land: Before them was Plenty, behind them Destruction and Desolation: He was present at the several Places and Times when the Pretender was proclaimed; and, on the Return of the Rebels into *Scotland*, he appeared in all Places at the Head of his Troop: He commanded them at the Battle of *Falkirke*; and with them he was defeated, and made a Prisoner, in the Field of *Culloden*.

To answer for these Treasons, is this unfortunate Peer now brought to your Lordships Bar: An awful Tribunal! The Illustrious Judges who here preside, are under the strictest Obligation to do impartial Justice; for their only Oath is their Honour: To this Tribunal we submit the Cause of the King, and of our Country: We will endeavour to prove the Fact; and then we shall, with all Deference and Submission, expect your Lordships Judgment.

Mr. Attorney-General.

May it please your Lordships,

YOUR Lordships have heard the Nature of the Charge against the Noble Lord at the Bar, as it is laid in the Indictment; and have likewise heard the Rebellion, in which he was engaged, traced from its Rise to its happy Conclusion. There is little Room, in a Case so notorious, for me to trouble your Lordships in the Opening. But, as the Crime, charged on the Noble Lord, is Part of that great Treason, which was aimed against his Majesty's Throne and Royal Person, it may be incumbent on me to say something upon this very solemn Occasion.

And however disagreeable it must be, to prosecute and try a Noble Person, one of your Lordships high Order, for a Crime of this Nature, publick Justice requires it, and it must be submitted to. Even your Lordships, from your great Regard to your King and Country, will be easy in the Discharge of that Part of it, which belongs to your Lordships.

As the Noble Lord has thought proper to plead not guilty, and thereby put the Proof of his Guilt on the King's Counsel; there are Two Things that will fall under your Lordships Consideration: The one, relating to the Nature of the Crime; the other, to the Proof in Support of it.

As to the former, your Lordships can have no Trouble: It is a Charge of High Treason, in levying War against his Majesty; a Crime declared to be so by the express Words of the Statute

Statute of the Twenty-fifth of *Edward* the Third, framed on Purpose for the Ease and Safety of the Subject; to remove that Anxiety which attended the Obscurity of the Law, in a Point of the greatest Importance to themselves, and their Posterity; and to reduce the Law of Treasons, which before lay hid in the Breast of the Judges, to a Certainty: Or, if that Law had never been made, This is one of those Sorts of Treasons that never did admit of a Doubt; and, if the Noble Prisoner had impartially consulted his own Breast, it must have told him it never could.

As that Act makes it necessary to Conviction, that the Treason should be proved by some Overt Act; it has been usual, in Indictments for this Species of Treason, not only to charge the levying War generally, but to specify those Circumstances of Hostility which usually accompany it, as a kind of Overt Act; such as joining himself to great Numbers of other Traitors, armed and arrayed with various Sorts of Weapons in a warlike Manner, with Colours displayed, Drums beating, and the like: These Circumstances are charged in the present Indictment; to which another more particular Overt Act is added, of entering, possessing, and detaining, the City of *Carlisle*, against his Majesty.

If these Charges are proved, the Consequence cannot be disputed: This brings me to that which alone will demand your Lordships particular Attention; how this Charge is brought home, in Point of Evidence, to the Prisoner at the Bar.

And, in this likewise, I believe I may venture to say, your Lordships will have no Difficulty; but you will have that great Satisfaction, of being perfectly clear in the Judgment you shall give.

The Charge is not of that Nature, which rests principally in the Breast of the Offender, to be discovered and proved by a Variety of Circumstances, set together and connected by Art, to find out the secret Designs of Conspirators. It consists in a great Number of Facts, done in open Day-light, in the Face of the World, avowed and justified, and in which the Noble Lord did not rely on the Secrecy of his Treason, but the Power of the Traitors, for his Defence.

Your Lordships therefore will permit me very shortly to point out some of those Facts, which will be fully proved by the Witnesses: I don't mean to enter into a Detail of what passed during the Course of the Rebellion; but only to touch on those Matters, which will directly affect the Prisoner, and shew the particular Part he acted in this great Scene of Treason and Confusion.

The Noble Prisoner seems to have engaged early in the Rebellion. Whether it was owing to that, or his former Attachments, he soon obtained a Trust about the Person of the Pretender's Son; which could be reposed in none, but the most zealously affected to that Cause. He was made the Commander of the Second Troop of Horse, called His Life Guards.

In this Post, he accompanied the Rebel Army in their First March into *England*, and entered *Carlisle*, at the Head of his Troop, in *November* last. In the same Command, he followed them through the Counties of *Cumberland*, *Lancaster*, *Cheshire*, *Staffordshire*, and Part of *Derbyshire*, till they came to *Derby*; and, when they were stopped there by the Approach of his Royal Highness the Duke, and forced to fly before him by the Way they came, he kept with them in their Flight, and entered *Carlisle* a Second time, with his Troop. He did not wait till his Royal Highness came up; but, with the rest of the Rebel Army, except the Garison, continued his Flight into *Scotland*. He went with them to *Glasgow* and *Stirling*, was present at the Battle of *Falkirke*, and, tho' not personally engaged, was drawn up at the Head of his Troop, to support the Rebels that were. He still continued to attend the Rebellion in all its Stages, till the same great Commander, who gave the first Check to its Progress, put a final End to it at *Culloden*.

Your Lordships will see him, by the Evidence, in all the Places I have mentioned, clothed in the Uniform of the Rebel Guards, with a white Cockade, his Sword drawn, heading, commanding, and leading his Troop, guarding the Pretender's Son, proclaiming the Pretender, entering and seizing his Majesty's Towns, and acting as an Enemy in his Majesty's Dominions, in open Defiance of the Laws, and to the infinite Mischief of his Majesty and his Subjects; and all this with a direct View of Dethroning his Majesty, Extirpating his Royal Family, and Setting up a Popish Pretender in his room.

The several Instances of his Lordship's marching with the Rebels, in a hostile Manner, will be so many distinct Proofs of the First Part of the Charge; and the particular Acts of his Entering and Continuing in *Carlisle*, in the same hostile Manner, will fully prove the Second.

I have stated all these Things, not because they are all necessary to the Conviction of the Noble Lord, but for the clearer Manifestation of his Guilt. A very small Part of these Facts would be sufficient, if proved to your Lordships Satisfaction: Nor would it avail his Lordship, if we should fail in the Proof of any Part of the Charge on the very Day it is laid in the Indictment, as the Noble Lord vainly seems to think. The precise Point of Time, as it is, in its own Nature, immaterial to the Guilt, is equally so in the Forms of our Law.

All that remains is, to call the Witnesses; which, I doubt not, will fully make out the Facts we have stated.

Sir

Sir John Strange. My Lords, We will now proceed to call our Witnesses.

Lord Balmerino. My Lords, May I be heard? I thought, when a Person was indicted, if there was any one Article in the Indictment, that was not good against him, that all the rest was good for nothing.

Lord High Steward. You must hear the Evidence. This cannot now be determined, till the Evidence is heard.

Lord Balmerino. Will your Lordships please to examine them as to the Time of my being at Carlisle?

Lord High Steward. The King's Counsel must proceed in their own Method, provided they proceed according to Law.

Lord Balmerino. My Lords, I humbly thank you for your Advice.

Lord High Steward. Would your Lordship have Counsel assigned you?

Lord Balmerino. No, my Lords; I don't want any.

Sir John Strange. Call *William M'Ghie*.

William M'Ghie sworn.

Sir John Strange. Look at the Noble Lord at the Bar. Do you know him?

M'Ghie. Yes; I know him very well.

Sir John Strange. Pray, will you acquaint my Lords, whether you saw him at any time, and where, in the Rebel Army?

M'Ghie. I saw the Noble Lord at *Carlisle*, going and coming.

Sir John Strange. Do you mean the Noble Lord at the Bar?

M'Ghie. Yes, I do.

Sir John Strange. Pray, do you recollect the First Time of your seeing him?

M'Ghie. It was some time in *November* last; but the Day I am not very sure of.

Lord High Steward. The Witness's Voice is so low, that some of my Lords desire, That a Clerk may repeat what he says. Is it your Lordships Pleasure, that one of your Clerks be appointed to stand by the Witness, and report to your Lordships what he says?

Lords. Ay, ay.

Then One of the Clerks was sworn, truly to report what the Witness should say; and stood within the Bar, near the Witness, and repeated his Answers.

Sir John Strange. If it is your Lordships Pleasure, I will begin the Examination again.

Lord High Steward. I desire he may repeat again what he has said.

Sir John Strange. I ask you, if you know the Noble Lord at the Bar?

M'Ghie. Yes; I do know the Noble Lord at the Bar.

Sir John Strange. Will you please to acquaint their Lordships, at what time, and where, you saw his Lordship with the Rebel Army?

M'Ghie. I saw him at *Carlisle*, going and coming. The First time I saw his Lordship there, was in *November* last.

Sir John Strange. Did not you see him before you came to *Carlisle*?

M'Ghie. I saw him before we came to *Carlisle*; I also saw him coming into *Carlisle*, and in *Carlisle*.

Sir John Strange. What Company was he in then?

M'Ghie. He was in Company with the Rebels.

Sir John Strange. How did he appear, and what Command had he then?

M'Ghie. I don't know whether he had a Command; but he was heading a Troop of Horse.

Sir John Strange. What Horse were they called?

M'Ghie. I don't know.

Sir John Strange. Were they Part of the Rebel Army?

M'Ghie. Yes.

Sir John Strange. Did you see them enter into the City of *Carlisle*?

M'Ghie. Yes.

Sir John Strange. Fix the Time, as near as you can.

M'Ghie. It was about the Eighteenth of *November*, as near as I can guess.

Sir John Strange. Can you tell what Number there was of them?

M'Ghie. I cannot really.

Sir John Strange. Will you acquaint the Lords, whether the Noble Lord at the Bar had any Arms?

M'Ghie. He had Pistols, and a Sword.

Sir John Strange. Was his Sword drawn, or undrawn?

M'Ghie. I do not mind to have seen it drawn.

Sir John Strange. Did you observe, whether he had any thing in his Bonnet or Hat, by way of Distinction?

M'Gbie. I do not mind that.

Sir John Strange. Did you observe in what Manner the Noble Lord was dressed?

M'Gbie. In a common Drefs.

Sir John Strange. When you call it a common Drefs, do you mean the Drefs that the Officers wore, or his own Habit?

M'Gbie. I mean his own former Habit.

Sir John Strange. Was there any thing particular in the Form of the Habit that the Officers of that Regiment wore?

M'Gbie. I do not mind any body, but himself.

Sir John Strange. You saw him march at the Head of that Body going to *Carlisle*, after it was in Possession of the Rebels?

M'Gbie. Yes; and I saw him in the Going back from *Derby*.

Sir John Strange. I ask you, Whether you observed the Noble Lord in *Carlisle*, after it was in Possession of the Rebels, and after the Marching you talk of, and before the Rebels left *Carlisle* to come Southwards?

M'Gbie. Yes; I saw him in *Carlisle*, when the Rebels were there.

Sir John Strange. Did you observe what he was doing then?

M'Gbie. Nothing, but riding on Horseback.

Sir John Strange. Was that with the Troop, or without?

M'Gbie. It was with the Troop.

Sir John Strange. Did you observe, whether his Sword was drawn?

M'Gbie. I did not.

Sir John Strange. How long did the Rebels stay in *Carlisle*, before they marched Southwards?

M'Gbie. About Two Days.

Sir John Strange. Did you observe the Noble Lord to go out of *Carlisle*?

M'Gbie. No; I was not South.

Sir John Strange. Did you observe him then?

M'Gbie. I was in the Hospital; but when I came back again, I saw this Lord.

Sir John Strange. Did you observe him to march out of *Carlisle*?

M'Gbie. Yes.

Sir John Strange. What time was that?

M'Gbie. It was in *November*.

Sir John Strange. What Distance of Time was there between their going and coming back? You can tell us when it was they marched back again?

M'Gbie. It was about *Christmas*, or a Day or Two before it.

Sir John Strange. Did you observe the Noble Lord coming into *Carlisle* upon the Return? Or do you only speak of seeing him there?

M'Gbie. I saw him coming back again from *Derby* to *Carlisle*.

Sir John Strange. Will you acquaint my Lords, whether you saw him at the Head of his Troop, or in what Manner?

M'Gbie. I saw him at the Head of a Troop of Horse in *Carlisle*.

Sir John Strange. What were they? Were they Part of the Rebel Army?

M'Gbie. Yes.

Sir John Strange. Had they any Drums, Colours, and Musick?

M'Gbie. They had both Colours and Drums, and Pipes playing.

Sir John Strange. How long did my Lord stay at *Carlisle* upon his Return?

M'Gbie. Only one Night.—I am very sure of it.

Sir John Strange. Did the Noble Lord go out of *Carlisle*, in the manner you have mentioned, at the Head of his Troop?

M'Gbie. In the same Manner, riding at the Head of a Troop of Horse.

Sir John Strange. Will you acquaint my Lords, Whether, at the Time the Noble Lord was there, the young Pretender was in *Carlisle*?

M'Gbie. Yes, he was there.

Sir John Strange. Was he there when they first went into *Carlisle*, before they came Southward?

M'Gbie. No, he did not come till the next Day.

Sir John Strange. Did you see the Pretender's Son the next Day?

M'Gbie. Yes.

Sir John Strange. In what manner did he enter *Carlisle*?

M'Gbie. He came in with Horse Life Guards.

Sir John Strange. Whose Life Guards were they?

M'Gbie. The young Pretender's.

Sir John Strange. Who commanded those Guards at that Time, or any Part of them ?

M'Ghie. I don't well know, there were so many commanded.

Sir John Strange. Did you observe the Noble Lord at the Bar to command any ?

M'Ghie. No, I did not.

Sir John Strange. When they marched away from *Carlisle* for *Scotland*, did the young Pretender go along with them ?

M'Ghie. Yes.

Sir John Strange. And did the greatest Part of the Rebel Army go with him ?

M'Ghie. All, except those that were left at *Carlisle*, and those that were upon the Road.

Sir John Strange. Was there a Garison left at *Carlisle* ?

M'Ghie. Yes.

Sir John Strange. By whose Order ?

M'Ghie. By Order of the young Pretender.

Attorney General. My Lords, we have done with this Witness : Will the Noble Lord ask him any Questions ?

Lord High Steward. My Lord, if you would ask this Witness any Questions, now is your Time.

Lord Balmerino. I think, my Lords, he has contradicted himself : He says first it was in *November*, and then in *December*, and then in *January*.

Lord High Steward. If you want him to explain himself as to the Time, you may ask him any Question.

Lord Balmerino. What was done in *November* ?

M'Ghie. The Rebels came first to *Carlisle* in *November* ; and, when they came back, on their Return, it was *December*, about *Christmas*.

Lord High Steward. He applies *November* to your first coming to *Carlisle*, and *December* to your returning thither.

Lord Balmerino. I can't tell the Time myself, unless I was at home to look at my Notes.

Lord High Steward. Will your Lordship ask him any more Questions ?

Lord Balmerino. No, my Lords.

Sir John Strange. I would beg Leave to ask the Witness one Question. He says there was a Garison left in the City of *Carlisle* ; I would ask him, Who that Garison was to defend the Place against ?

M'Ghie. Against his Majesty King *George*.

Hugh Douglas fworn.

Mr. Solicitor General. Look at the Noble Lord at the Bar, and see whether you know him.

Douglas. Yes, I know him.

Solicitor General. Then give my Lords an Account, Whether you saw him in the Rebel Army at any Time ; and when, and where, and what he did : And give your Account, as near as you can, in Order of Time.

Douglas. I saw him at *Diddeston*, before the Pretender marched out of *Edinburgh*.

Solicitor General. Now, go on : Where did you see him next ?

Douglas. I saw him at *Kelso*.

Solicitor General. Where next ?

Douglas. At *Carlisle*.

Solicitor General. In what manner did he march along with them from these several Places to *Carlisle* ?

Douglas. He was Colonel of the Second Troop of the Pretender's Life Guards.

Solicitor General. Did he, during this March, command this Second Troop, or ride at the Head of them ?

Douglas. He commanded them, and rode at the Head of them.

Solicitor General. How were they armed ?

Douglas. They had each a Carbine, a Brace of Pistols, and a Broad Sword.

Solicitor General. Did you see him at *Carlisle* ?

Douglas. He marched from *Penrith* to *Carlisle*, and back again into *Scotland*, at the Head of the Troop of Life Guards. I saw him all the Way.

Solicitor General. What did you see him do at *Carlisle* ?

Douglas. I saw him at the Head of his Troop of Horse in the Street, when they were drawn up, upon coming in there.

Solicitor General. Where did you see him else ? Did you see him in the Return ?

Douglas. I saw him at *Derby*, and at *Manchester*, in returning.

Solicitor General. Did you see him any where else ?

Douglas.

Douglas. I saw him at *Falkirk*, and saw him march all the Way from *Penrith* to *Carlisle*, in returning.

Solicitor General. Did you see him at *Carlisle*, on his Return?

Douglas. Yes.

Solicitor General. When you saw him at *Carlisle*, was he with the Rebel Army?

Douglas. Yes.

Solicitor General. Did you see him at the Head of his Troop?

Douglas. Yes, I saw him at the Head of his Troop of Horse, march from *Penrith* to *Carlisle*.

Solicitor General. Did you see him, at any Time in that March, act as an Officer?

Douglas. Yes, he acted so far as an Officer, that he rode at the Head of his Troop all the Way.

Solicitor General. Did you afterwards see him?

Douglas. Yes, I saw him at *Diddeston*.

Solicitor General. Do you speak of your seeing him in Going, or in the Return?

Douglas. I speak of the Return. I saw him at *Carlisle*, and at the Battle of *Falkirk*.

Solicitor General. Did you see him engaged in that Battle?

Douglas. No, he was not engaged; none of the Horse were engaged.

Solicitor General. Did you see him with his Sword drawn?

Douglas. All the Men had their Swords drawn; but I don't remember particularly as to him, whether I saw him with his Sword drawn, or not.

Solicitor General. Did you see him there at the Head of any Troop of Horse?

Douglas. I saw him at the Head of the Second Troop of Life Guards at the Battle of *Falkirk*.

Solicitor General. Did you see him after that Time?

Douglas. I don't remember that I saw him afterwards.

Solicitor General. What Sort of Dress had he?

Douglas. He had a blue Coat faced with Red, a Gold-laced Hat, and a Cockade.

Solicitor General. What Colour was the Cockade?

Douglas. White.

Solicitor General. What was the Uniform of the Troop?

Douglas. They all had blue Coats with red Facings, and Gold-laced Hats.

Solicitor General. Had they all white Cockades?

Douglas. Yes.

Solicitor General. Had the Troop their Swords drawn?

Douglas. Yes, at *Falkirk* they were all drawn up together, and every one had his Sword drawn.

Attorney General. Where was this Troop at the Battle of *Falkirk*?

Douglas. They were drawn up together in a Field, with the Earl of *Kilmarnock*, and Lord *Pitligo*.

Attorney General. Was a white Cockade any distinguishing Mark of belonging to the Rebel Army?

Douglas. Every one who was in the Rebel Army had a white Cockade.

Lord High Steward. Will your Lordship ask this Witness any Questions?

Lord Balmerino. No, my Lords.

James Barclay sworn.

Mr. Noel. Look upon the Noble Lord, the Prisoner at the Bar. Do you know him?

Barclay. Yes.

Mr. Noel. Did you see him at any Time in *January* last?

Barclay. Yes, I did.

Mr. Noel. Where did you see him?

Barclay. At *Glasgow*.

Mr. Noel. I think, you say, you saw him at *Glasgow*, in *January* last?

Barclay. Yes.

Mr. Noel. Who was he with at *Glasgow*?

Barclay. He was with the Pretender's Son.

Mr. Noel. Was he with any Forces, and what Forces, at *Glasgow*?

Barclay. He was Colonel of the Second Troop of Guards.

Mr. Noel. Who did those Guards belong to?

Barclay. He was Colonel of the Second Troop of the Pretender's Son's Life Guards.

Mr. Noel. Were they called by any particular Name?

Barclay. They were called Mr. *Arthur Elphinston*'s Guards.

Mr. Noel. What *Elphinston*?

Barclay. He that is Lord *Balmerino* now, the Prisoner at the Bar.

Mr.

Mr. Noel. How was he armed?

Barclay. He was armed with a broad Sword, and a Brace of Pistols.

Mr. Noel. How did he march?

Barclay. At the Head of his Troop.

Mr. Noel. Where did you see him march?

Barclay. I saw him march out of *Glasgow* and *Kelso*.

Mr. Noel. Did he march out with his Sword drawn?

Barclay. I don't remember.

Mr. Noel. Had he Pistols?

Barclay. He had Pistols.

Mr. Noel. How was he dressed?

Barclay. He had a blue Coat turned up with Red, a Gold-laced Hat, and a white Cockade.

Mr. Noel. I desire to know, What Cockades were worn by the Forces in the Service of the Pretender's Son?

Barclay. White Cockades.

Mr. Noel. Were they the distinguishing Mark of the Rebel Forces?

Barclay. Yes.

Mr. Noel. Did you see the Noble Lord at the Bar at *Bannockburn*?

Barclay. Yes, I saw him there several Times, at the Head of his Troop.

Mr. Noel. Were they drawn up in any Form?

Barclay. They were drawn up at the Pretender's Lodging Door.

Mr. Noel. Where was that?

Barclay. At one *Mr. Patterson's*.

Mr. Noel. Was he armed then?

Barclay. Yes.

Mr. Noel. How was he armed?

Barclay. With a broad Sword, and a Brace of Pistols.

Mr. Noel. Did you see him at any time at *Stirling*?

Barclay. I saw him at *Stirling*; but not at the Head of his Troop.

Mr. Noel. I desire to ask one general Question, Whether, at all the Places where you saw him, he was armed, and with Troops belonging to the Pretender?

Barclay. Yes.

Sir John Strange. He says, he saw the Troop drawn up at the Pretender's Lodging Door: I desire to know, Whether the Pretender's Son saw the Troops drawn up?

Barclay. I don't know whether he saw them drawn up; but I know he was there at that time.

Lord High Steward. Would you ask this Witness any Questions?

Lord Balmerino. No, my Lords.

David Gray sworn.

Sir Richard Lloyd. Do you know the Prisoner at the Bar?

Gray. Yes, Sir.

Sir Richard Lloyd. How long have you known him?

Gray. I have known him about Six or Seven Years.

Sir Richard Lloyd. Do you remember him, at any Time, marching with any Guards or Soldiers with him?

Gray. Yes, I saw him march with a Troop of Horse.

Sir Richard Lloyd. Where was that, and when?

Gray. After *Carlisle* was taken by the Rebels, I saw him marching Southward with the Second Troop of Life Guards.

Sir Richard Lloyd. What, the Pretender's Life Guards?

Gray. Yes.

Sir Richard Lloyd. Whither were they marching?

Gray. Southwards.

Sir Richard Lloyd. Did the rest of the Rebel Army march at that time?

Gray. Yes, and the same Way.

Sir Richard Lloyd. Was the Prisoner armed?

Gray. Yes.

Sir Richard Lloyd. How was he armed?

Gray. With a broad Sword, and Pistols.

Sir Richard Lloyd. What Dress was he in?

Gray. He was in Blue, turn'd up with Red.

Sir Richard Lloyd. Whose Dress was that?

Gray. It was the Dress of all the Guards.

Sir Richard Lloyd. What Distinction had he in his Hat?

Gray. Nothing but a white Cockade.

Sir Richard Lloyd. Was that any Mark of Distinction?

Gray. No, it was no Mark of Distinction at all; for they all wore it.

Sir Richard Lloyd. You say, you saw his Lordship march Southward: Did you see him afterwards on his March Northward?

Gray. I saw him march from *Elgin* of *Murray* towards *Inverness*, a little before the Battle of *Culloden*.

Sir Richard Lloyd. Was he then armed?

Gray. Yes.

Sir Richard Lloyd. How was he armed?

Gray. In the same Form as he was before.

Sir Richard Lloyd. How was he dressed?

Gray. In the same Cloaths he was before.

Sir Richard Lloyd. Was he then at the Head of his Troop?

Gray. Yes, he was.

Sir Richard Lloyd. Do you speak of the same Life Guards?

Gray. Yes.

Sir Richard Lloyd. How long was it before the Battle of *Culloden*, that you thus saw him at the Head of his Troop?

Gray. About Ten Days.

Mr. Attorney General. I desire he may explain who he meant, when he said, they all wore a white Cockade.

Gray. The Rebel Army.

Lord Balmerino. I observe, that none of the Witnesses who have been called, have made good the Charge against me; that I was at *Carlisle* on the Tenth of *November*, nor for some time afterwards. I believe it will be to little Purpose to go any further; and am sorry I have taken up so much of your Lordships Time; for I was of Opinion, that, if any Article in the Indictment was not good against me, all the Indictment fell.

Lord High Steward. What does your Lordship insist upon? Do you insist on the Day being mistaken in the Indictment, or that you were not present at the actual Taking, either of the Town or Castle of *Carlisle*, by the Rebels?

Lord Balmerino. That I was not at *Carlisle*, either at the Taking of the Town, or the Castle.

Mr. Serjeant Skinner. I beg Leave to call another Witness.

James Paterfon sworn.

Serjeant Skinner. Look at the Noble Lord there: Do you know the Noble Lord?

Paterfon. Yes, I know the Noble Lord very well.

Serjeant Skinner. How long have you known him?

Paterfon. Ever since we marched from *Lauder*.

Serjeant Skinner. What Time was that?

Paterfon. I remember it was the first Night we marched from *Dalkeith*.

Serjeant Skinner. What Time was that you marched from *Dalkeith*?

Paterfon. I don't remember the Time particularly.

Serjeant Skinner. How long before *Christmas* was it?

Paterfon. I can't say I remember, how long it was before *Christmas*.

Serjeant Skinner. Where was it this Noble Lord lodged?

Paterfon. He lodged at the same House I happened to be in.

Serjeant Skinner. What Command had he at that Time?

Paterfon. I did not know, that he had any Command then.

Serjeant Skinner. Do you remember his coming to *England*?

Paterfon. Yes.

Serjeant Skinner. Do you remember what Month that was?

Paterfon. No; I don't remember the Time exactly.

Serjeant Skinner. Do you remember being at *Long Town*?

Paterfon. Yes.

Serjeant Skinner. Was the Pretender's Son at *Long Town*?

Paterfon. Yes.

Serjeant Skinner. Was *Lord Balmerino* there?

Paterfon. He was there as a Witness to the proclaiming the Pretender.

Serjeant Skinner. Was you present when the Pretender was proclaimed? And was he there?

Paterfon. Yes.

Serjeant

Serjeant Skinner. In what Manner did the Noble Lord attend there, when the Pretender was proclaimed?

Paterfon. My Lord only appeared as one of the Volunteers with the Pretender's Life Guards.

Serjeant Skinner. Was that Lord at the Bar with them?

Paterfon. Yes.

Serjeant Skinner. Was he at the Head of them then?

Paterfon. No; he stood only among the rest.

Serjeant Skinner. What Drefs had he on?

Paterfon. A blue Coat with red Facings.

Serjeant Skinner. What was the Uniform Drefs of those Guards?

Paterfon. A blue Coat with red Facings.

Serjeant Skinner. Had he any thing in his Hat?

Paterfon. Yes; he wore a Cockade.

Serjeant Skinner. What Colour was his Cockade?

Paterfon. White.

Serjeant Skinner. Was that wore by all the Pretender's Forces?

Paterfon. Yes.

Serjeant Skinner. Where did you see my Lord next?

Paterfon. At Lancaster.

Serjeant Skinner. What was he doing there?

Paterfon. He was Witnefs to the proclaiming the Pretender there.

Serjeant Skinner. Were there any Guards there?

Paterfon. I remember very well, all the Life Guards were present there, and the Prisoner was with them.

Serjeant Skinner. How did the Prisoner at the Bar appear there?

Paterfon. He was at the Head of his Troop there.

Serjeant Skinner. How was he armed?

Paterfon. With a Brace of Pistols and a Sword.

Serjeant Skinner. What Sort of a Sword was it?

Paterfon. A Highland Sword.

Serjeant Skinner. Was it drawn?

Paterfon. Yes.

Serjeant Skinner. Where did you see him next?

Paterfon. I remember to have seen him at the Battle of *Falkirk*.

Serjeant Skinner. Was he at the Head of any Forces there?

Paterfon. Yes; he was at the Head of his Corps there.

Serjeant Skinner. Was his Sword drawn then?

Paterfon. Yes.

Serjeant Skinner. Was the Troop engaged?

Paterfon. No; I think it was not.

Serjeant Skinner. Do you know what became of him afterwards?

Paterfon. I saw him frequently afterwards; but I can't tell any particular Place, but at the Battle of *Culloden*.

Serjeant Skinner. Where did you see him then?

Paterfon. I remember to have seen him drawn up at the Head of his Corps at the Battle of *Culloden*.

Serjeant Skinner. Was his Sword drawn?

Paterfon. Yes; his Sword was drawn.

Serjeant Skinner. Did you see him any where afterwards?

Paterfon. I saw him afterwards at *Castle Grant*; I saw him come in there after the Battle of *Culloden*.

Serjeant Skinner. Was he taken Prisoner there?

Paterfon. As far as I can tell, my Lord surrendered there.

Mr. Attorney General. Do you remember to have seen the Noble Lord at *Carlisle*?

Paterfon. Yes; I remember to have seen my Lord march into *Carlisle* on their Retreat, at the Head of his own Corps.

Mr. Attorney General. We have done with this Witnefs: Will the Noble Lord ask him any Questions?

Lord Balmerino. He might see me at *Long Town*, but not at *Carlisle* at the proclaiming the Pretender; for I was not there till a Fortnight after.

Mr. Attorney General. Did you see the Prisoner at *Carlisle*?

Paterfon. As far as I remember any thing in the World, I saw my Lord there.

Lord Balmerino. What was this Witnefs there?

Paterfon. My Lord, I was a Gentleman's Servant.

Lord Balmerino. I don't remember him: I want to know what Regiment this Man was in; or what he was; and what was his Business?

Lord High Steward. You hear what his Lordship says: What was you there?

Paterfon. I was a Gentleman's Servant in the First Troop of Life Guards.

Lord High Steward. Whose Life Guards?

Paterfon. The Pretender's Guards: I was Servant to Mr. Hume.

Lord Balmerino. I was at Long Town then.

Roger M'Donald sworn.

Mr. Attorney General. Give an Account, whether you saw the Prisoner march with the Rebel Army, at the Time of their first Setting out, either in Scotland or England; and where?

M'Donald. The First Time I saw him was at Holyrood House.

Attorney General. What did you see him do there?

M'Donald. The only thing that I observed was, That I saw the Prisoner with the Guards; but he was in no Place of Distinction.

Attorney General. What Guards?

M'Donald. The Pretender's Guards.

Attorney General. Where did you see him with them?

M'Donald. In the Court of Holyrood House.

Attorney General. Was the Pretender's Son at Holyrood House at that Time?

M'Donald. He was at Edinburgh at that Time.

Attorney General. Where did you see him the next Time?

M'Donald. The Second Time that I remember to have seen the Prisoner, was on the Retreat, coming from Derby, entering into the Town of Manchester, when the Horse were formed at the Outside of the Town of Manchester.

Attorney General. How did the Prisoner appear there?

M'Donald. With his Sword drawn at the Head of his Squadron.

Attorney General. Was the Prisoner at the Bar at the Head of those Rebels that were drawn up?

M'Donald. Yes; I remember to have seen the Prisoner in particular.

Attorney General. Did he command any Part of the Rebel Army?

M'Donald. Not to my Knowledge; but I remember to have seen him there.

Attorney General. Do you remember seeing him any where else?

M'Donald. The next Time I particularly remember was, that I saw him at the Battle of Falkirk, after the Squadron was formed, and Lord Elcho's Horse were drawn up there.

Attorney General. Did you see the Prisoner command any Horse there?

M'Donald. The Squadron was not fully formed, when I saw him; but I remember to have seen the Prisoner at the Bar at the Head of a Squadron of Horse there.

Attorney General. Did you, at any time, see him marching out of Elgin of Murray to Inverness, at the Head of the same Squadron?

M'Donald. I remember to have seen the Prisoner at the Head of the same Squadron at Inverness.

Attorney General. Did you see him in any particular Dress at that Time?

M'Donald. I don't remember his Dress then; but at Manchester I remember it was a Suit of Blue turned up with red Cuffs.

Attorney General. Was it the Uniform Dress of any Part of the Pretender's Army?

M'Donald. It was the Uniform Dress of the Pretender's Guards.

Attorney General. Was there any particular distinguishing Mark that he wore?

M'Donald. I can't say I do remember any.

Attorney General. Had he a white Cockade?

M'Donald. Yes; he had.

Attorney General. Was that the common distinguishing Mark of the Rebel Army?

M'Donald. Yes; it was the distinguishing Mark. They all wore white Cockades; that was the general Thing that was worn.

Attorney General. We will trouble your Lordships with no more Witnesses.

Lord High Steward. Will your Lordship ask this Witness any Questions?

Lord Balmerino. No, my Lords; I am sorry I have taken up so much of your Lordships Time.

Lord High Steward. The King's Counsel having gone through their Evidence, now is your Lordship's Time to make your Defence.

Lord Balmerino. My Lords, I have said all that I have to say. I observe, that none of the Witnesses have agreed upon the Day charged in the Indictment; and I have nothing else to say.

Lord

Lord High Steward. You say the Witnesses have not proved, That your Lordship was at *Carlisle* on the particular Day laid in the Indictment: But the Witnesses have proved, That they saw you in Arms at the Head of your Troop of Rebels at *Carlisle*. If your Lordship can disprove that Fact, this is your Time to do it. Have you any thing to say in Support of what you have observed, about the particular Day not being proved, as laid in the Indictment? I should be glad to know, upon what your Lordship would put your Defence. They have proved you to be in Arms at *Carlisle* in *November*.

Lord Balmerino. But not at the Taking of *Carlisle*; and I can prove, I was not there, at the Time *Carlisle* was taken; but was Twelve Miles off.

Mr. Serjeant Skinner. The Witnesses don't say he was at the Surrender of the Town; but he was in the Town, after it was taken by the Rebels; and that he marched into the Town, at the Head of his Troop. He was with them, on their March, at *Long Town* and *Lancaster*, and several other Places; and, if we have made out any one Fact laid in the Indictment, it is sufficient, and, I hope, your Lordships will think, the Treason is proved.

Mr. Attorney General. I beg your Lordships would spare me a few Words upon this Occasion: And, if I am right, I take the Prisoner's Objection to be this, That the Witnesses for the Crown have not proved the Facts to be committed on the precise Day laid in the Indictment.

Lord Balmerino. That is not the Case: You mistake it intirely.

Lord High Steward. My Lord *Balmerino* objects, That it is not proved he was at *Carlisle*, when it was actually taken by the Rebels.

Attorney General. Then I apprehend the Objection to be only this, That he was not there at the Taking of *Carlisle*.

Lord Balmerino. That is the Objection.

Lord High Steward. What have the King's Counsel to say to that Objection?

Mr. Serjeant Skinner. My Lords, The Objection made by the Noble Peer at your Lordships Bar, is, That, on the Tenth Day of *November*, the Day laid in the Indictment, he was not at *Carlisle*; and that he was not at the Taking of that City and Castle.

My Lords, The Day laid in an Indictment is merely Matter of Form. Some Day, previous to the Indictment, must be laid; but the Proof is not tied up to that Time: Any Proof, before or after the Day, may be admitted; and it is sufficient, if it be before the Time of preferring the Indictment.

And suppose the Noble Lord was not present at the time that the City and Castle of *Carlisle* were actually taken; yet it is proved, that he marched into the City armed, and at the Head of his Troop, the Second Day after the Castle was taken; so that he was in the Possession of the City and Castle: And the Detainer of the King's Town or Castle is High Treason: And where many Acts of Treason are laid in an Indictment of High Treason, if any one Charge be made good, the Person must be convicted.

I therefore submit, that there is no Weight in the Objection made by this Noble Lord.

Attorney General. My Lords, The Objection, if it can be of any Use to the Noble Lord, must be, to shew, that the Evidence is not sufficient to induce your Lordships to find him guilty. The Indictment consists of a general Charge of levying War, together with the Circumstances of being arrayed and assembled in a warlike Manner against his Majesty, and the particular Fact of entering, possessing, taking, and defending the City and Castle of *Carlisle* against his Majesty. The former is fully proved; for every one of the Witnesses prove, he marched in the Rebel Army, arrayed in a hostile Manner, riding at the Head of the Second Troop of the Pretender's Son's Horse Guards. As to the other Fact, of his Entering and Taking of *Carlisle*; it is proved by Three Witnesses, That the Prisoner came into *Carlisle*, at the Head of his Troop, when the Rebels were in Possession of it, and held it for the Pretender: Which is a full, positive Proof of that Fact.

But the Noble Lord objects, That he was not present at the Taking.

There are Two clear Answers to this: One, That neither the Law, nor the Charge in the Indictment, makes that necessary, if it appears, that he did enter it, and was in Possession of it, in a hostile Manner.

Another is, That, if that particular Fact was not at all proved, it could be of no Service to his Lordship, while there is another Act of Treason charged, and proved.

By the Law, every Entry and Possession of the King's Town or Fortrefs in a hostile Manner, against the King, is High Treason; nor does the Law distinguish how that Entry and Possession is obtained, if it is done by Rebels, and in Opposition to the Royal Authority. His Lordship neither denies his Entry and holding the Possession for the Pretender, nor disputes the Weight of the Evidence that proves it: And it can do him no Good, if it appeared never so clearly, that the Time of his personal Entry was not till after the Rebel Army had made themselves Masters of it.

But, if this Fact was as doubtful as it is clear, the Evidence of the other Part of the Charge is certain and unobjected to; and there is nothing plainer, in Point of Law, than that the Proof of

any one Overt Act, laid in the Indictment, is sufficient, tho' no Evidence is given of any others that are charged.

The Noble Lord, tho' he now seems to give it up, did object at first, That the Evidence did not prove the Treason on the Tenth of *November*, the Day charged in the Indictment. Left that should have any Weight, I would only say, That it has been frequently adjudged, that, though a precise Day must be charged, the Day is immaterial in Point of Proof: So it was particularly in the Case of *Sir Henry Vane*, in the Time of King *Charles* the Second: He was indicted for High Treason; and it was laid in the Indictment, That the Facts were committed on a certain Day, in the Eleventh Year of King *Charles* the Second. It was only proved, that they were committed in the First Year of his Reign, and yet held it was sufficient to support the Indictment.

The Question, therefore, on the Whole, will only be, Whether treasonable Acts of Hostility have been proved upon the Noble Lord: And, as that can admit of no Doubt, neither can his being guilty of the Treason, charged on him by this Indictment, admit of any.

Sir John Strange. My Lords, I don't know whether it is necessary for all of us to speak in this Case. For my Part, I shall say but a Word or Two. Here are several Acts of Treason that are alleged in the Indictment; and whoever hath given the Noble Lord, who is the Prisoner, to understand, that every particular Act must be proved (if any such Advice can have been given him) hath been mistaken; because it is clear and certain, in Point of Law, that tho' ever so many Facts are laid in the Indictment, yet, if there is legal Proof of any one of those Facts, which is High Treason, it is sufficient to found your Lordships Judgment, that the Person, so proved guilty of any particular Fact, is to be adjudged guilty of High Treason.

Your Lordships, however, will be pleased to observe, how many particular Acts are laid in the Indictment, and whether they are not all proved. First, it is laid, That the Noble Lord at the Bar did, with many others, arm, array, and dispose himself in a warlike and hostile Manner against the King. This, my Lords, is clearly proved; for the Witnesses have told your Lordships, That he had the Command of the Second Troop of the Pretender's Life Guard, which was Part of the Rebel Army: That he marched at the Head of this Troop, with Drums beating, and Colours displayed: That he wore a particular Habit, which was Blue, turned up with Red, a laced Hat, and a White Cockade, being the Uniform Dress of the Troop: And the being thus arrayed in this hostile Manner, my Lord *Hale*, in his First Volume, *H. P. C.* 150, 152. says, is levying War against the King; and this has been fully proved to your Lordships, against this Noble Lord the Prisoner at the Bar, by more than Two Witnesses. His being present at several Places at the Proclaiming of the Pretender, has been likewise proved to your Lordships: And we use it as a Circumstance to lead your Lordships Judgment, with what Intent he was thus armed and arrayed in a hostile Manner, which was plainly in order to dethrone his Majesty, and place a Pretender upon the Throne. This has been proved, against the Noble Lord at the Bar, to have occurred at Two Places, where this Proclamation was made.

Another Circumstance, which has been proved, is, his being drawn up and formed at the Battle of *Falkirk*; and tho' the Witnesses do not say, that that Party of the Pretender's Life Guards was actually engaged upon this Occasion, yet, I humbly apprehend, that is not material. There can be no Doubt, in Point of Law, but that every body, who is so drawn up in a warlike and hostile Manner, is waging War, tho' every Party is not engaged. He was there drawn up with his Forces, with his broad Sword drawn, and ready to engage at that time. And, my Lords, we trace him from thence to the glorious Field of *Culloden*; and your Lordships observe, he was there an Officer, leading his Squadron, and commanding the Second Troop of Life Guards of the Pretender; and, after the Disaster which befel them that Day, and for which we have great Reason to be thankful, the Noble Lord at the Bar surrendered himself to the King's Forces, as one of those engaged against the King at that Battle. My Lords, lay all these Things together, and your Lordships will see, it is no way necessary to prove, whether this Noble Lord was present at the first Taking of *Carlisle*, or not: Which seems to be the only Point, on which the Noble Lord has rested his Defence.

But, my Lords, if it was necessary to shew that, I apprehend, it is proved. The Taking of a Town or a City is not the Act of a single Man, but the Act of a great Number of Persons, got together for that Purpose; therefore, as to any Man, who was a Part of the Rebel Army, and went into the City of *Carlisle*, after it surrendered to the Rebels, and joined with them, it is an actual Taking of that City: For it was the Force and Terror without the City, and the appearing in the hostile Manner, already described, which occasioned the Surrender of the Place. Every one therefore, who joined in this Force and Terror, is instrumental in the Taking of the Town. It is proved, that he entered into *Carlisle*, and was in Possession of the Town; it is proved, by more than one Witness, that he did it at the Head of the Pretender's Life Guards: He lay there one Night, while the Rebels were in Possession of the Town, and then he marched out Southward. Then there is his returning back to *Carlisle*, taking Possession of it the Second Time; his being there with the young Pretender; his going away with him and the Rebel Army, and leaving a Garrison in the Town, to defend it against the King's Forces, when they should come up. My Lords, this,

this, with Submission to your Lordships, is a strong and clear Proof, that he entered and took Possession of *Carlisle*, and kept it against the King, as laid in the Indictment; and whether he remained there a longer or a shorter Time, whether he lay One Night or Twenty Nights in it, makes no Difference in Point of Law.

I don't observe, the Noble Lord lays much Stress upon the Tenth of *November's* being laid in the Indictment, as the Day on which the Treason was committed; and therefore I forbear to trouble your Lordships upon it; for, to be sure, it does not signify, whether the Facts committed were on the Tenth of *November*, or any other Day.

My Lords, I apprehend, every particular Act of Treason laid in the Indictment, against the Noble Lord at the Bar, is fully proved; and therefore I submit the Whole to your Lordships Judgment.

Mr. Solicitor General. My Lords,—

Lord Balmerino. I am satisfied I was mistaken; and ask your Lordships Pardon, for taking up so much of your Time.

Mr. Solicitor General. I was going to have said, That I did not apprehend it necessary for me to speak upon this Point, from any Difficulty in the Objection. But, as the Answer to the Objection depended not upon natural, but legal Reasoning, and established Forms, and as the Noble Lord had chose not to have the Assistance of Counsel in stating and enforcing his Objection, I would, for his Satisfaction, have said a Word or Two, not only to shew, that the Matter is settled by the uniform Authority of all our Books, and many adjudged Cases; but to have explained why it has been settled, that the Treason must be laid in the Indictment to have been committed on a particular Day, and yet, at the Trial, need not be proved to have been committed on that precise Day. As he has declared himself satisfied, there is no Occasion to say any thing.

Then the Lord High Steward returned back to his Chair.

Lord President. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the same Order they came down: And, after some Time, the House was adjourned again into *Westminster Hall*; and the Peers being there seated, the Lord High Steward in his Chair, and the House resumed, the Serjeant at Arms made Proclamation for Silence, as usual.

Lord High Steward. Your Lordships were pleased, in the Chamber of Parliament, to come to a Resolution, That the Opinion of the Learned and Reverend Judges should be taken upon the following Question; *viz.* Whether it is necessary, that an Overt Act of High Treason should be proved to have been committed on the particular Day laid in the Indictment. Is it your Lordships Pleasure, that the Judges do now give their Opinions on that Question?

Lords. Ay, ay.

Lord High Steward. My Lord Chief Justice.

Lord Chief Justice Lee. The Question, proposed by your Lordships, is, Whether it be necessary, that an Overt Act of High Treason should be proved to be committed on the particular Day laid in the Indictment.

We are all of Opinion, That it is not necessary to prove the Overt Act to be committed on the particular Day laid in the Indictment: But as Evidence may be given of an Overt Act before the Day, so it may be after the Day specified in the Indictment; for the Day laid is Circumstance and Form only, and not material in Point of Proof: And this is the known, constant Course of Proceeding in Trials.

Lord High Steward. Lieutenant of the *Tower*, Take my Lord *Balmerino* from the Bar.

Lord Balmerino. Will your Lordships be pleased to allow me to speak Two Words?

Lord High Steward. If you think fit, my Lord.

Lord Balmerino. Your Lordships may think, I have had very bad Advice in this Case: But, to do Justice to my Solicitor *Mr. Ross*, he laid my Case before Counsel; and he told me, They were of the same Opinion with what the King's Counsel have offered: But I myself had a Notion, that, not being at *Carlisle* at the Time it was taken, I was not within the Indictment; and I thought there was something in the Objection; and that was the Reason of my giving your Lordships so much Trouble. I am very sorry for it; and ask your Lordships Pardon.

Lord High Steward. Has your Lordship any thing further to offer?

Lord Balmerino. No, my Lords.

Lord High Steward. Lieutenant of the *Tower*, Take my Lord *Balmerino* from the Bar.
Which was done accordingly.

Lord High Steward. Your Lordships have heard the Evidence, and every thing that has been alleged on both Sides; and you have also heard the Opinions of the Learned and Reverend Judges on a particular Question stated to them. The Solemnity of your Proceedings requires, that your Lordships Opinions on the Question, Of Guilty or Not guilty, should be delivered severally, in the Absence of the Prisoner, beginning with the junior Baron; and that the Prisoner should afterwards be acquainted with the Result of those Opinions by me. Is it your Lordships Pleasure to proceed now to give your Opinions on the Question, Of Guilty or Not guilty?

Lords. Ay, ay.

Then the Lord High Steward stood up, uncovered; and, beginning with the youngest Peer, said,

Lord High Steward. Henry Arthur Lord Herbert of Chirbury, What says your Lordship? Is Arthur Lord Balmerino Guilty of the High Treason whereof he stands indicted, or Not guilty?

Whereupon Henry Arthur Lord Herbert of Chirbury, standing up in his Place, uncovered, and laying his Right Hand upon his Breast, answered,

Guilty, upon my Honour.

In like manner, the several Lords aftermentioned, being all that were present, answered as followeth;

Samuel Lord Sandys. Guilty, upon my Honour.

Richard Lord Edgumbe. Guilty, upon my Honour.

William Lord Fitz William. Guilty, upon my Honour.

John Lord Chedworth. Guilty, upon my Honour.

Stephen Lord Ilchester. Guilty, upon my Honour.

Henry Lord Monfort. Guilty, upon my Honour.

William Lord Talbot. Guilty, upon my Honour.

Robert Lord Raymond. Guilty, upon my Honour.

John Lord Monson. Guilty, upon my Honour.

John Lord Hobart. Guilty, upon my Honour.

Peter Lord King. Guilty, upon my Honour.

Matthew Lord Ducie. Guilty, upon my Honour.

Charles Lord Cadogan. Guilty, upon my Honour.

Robert Lord Romney. Guilty, upon my Honour.

Richard Lord Onslow. Guilty, upon my Honour.

Allen Lord Bathurst. Guilty, upon my Honour.

Samuel Lord Masham. Guilty, upon my Honour.

Thomas Lord Trevor. Guilty, upon my Honour.

Buffy Lord Mansell. Guilty, upon my Honour.

Herbert Lord Montjoy. Guilty, upon my Honour.

George Lord Hay. Guilty, upon my Honour.

James Lord Somerville. Guilty, upon my Honour.

George William Lord Hervey. Guilty, upon my Honour.

Francis Lord Conway. Guilty, upon my Honour.

Charles Lord Butler of Weston. Guilty, upon my Honour.

Fulwar Lord Craven. Guilty, upon my Honour.

Charles Lord Cornwallis. Guilty, upon my Honour.

John Lord Berkeley of Stratton. Guilty, upon my Honour.

John Lord Ward. Guilty, upon my Honour.

William Lord Byron. Guilty, upon my Honour.

James Lord Strange. Guilty, upon my Honour.

Edward Lord Clifton. Guilty, upon my Honour.

John Lord St. John of Bletsoe. Guilty, upon my Honour.

Francis Lord North and Guilford. Guilty, upon my Honour.

Hugh Lord Willoughby of Parham. Guilty, upon my Honour.

Edward Lord Wentworth of Nettlested. Guilty, upon my Honour.

Richard Lord Willoughby de Broke. Guilty, upon my Honour.

Ferdinando Dudley Lord Dudley. Guilty, upon my Honour.

John Lord Delawarr. Guilty, upon my Honour.

Pattee Viscount Torrington. Guilty, upon my Honour.

Simon Viscount Harcourt. Guilty, upon my Honour.

Hugh Viscount Falmouth. Guilty, upon my Honour.

Richard Viscount Cobham. Guilty, upon my Honour.

John Viscount St. John. Guilty, upon my Honour.

Henry Viscount Lonsdale. Guilty, upon my Honour.

William

William Viscount Hatton. Guilty, upon my Honour.
Thomas Viscount Weymouth. Guilty, upon my Honour.
Charles Viscount Townshend. Guilty, upon my Honour.
Thomas Viscount Fauconberg. Guilty, upon my Honour.
Richard Viscount Say and Seale. Guilty, upon my Honour.
Price Viscount Hereford. Guilty, upon my Honour.
Francis Earl Brooke. Guilty, upon my Honour.
Hugh Earl Clinton. Guilty, upon my Honour.
Thomas Earl of Leicester. Guilty, upon my Honour.
William Earl of Bath. Guilty, upon my Honour.
William Earl of Harrington. Guilty, upon my Honour.
Robert Earl of Orford. Guilty, upon my Honour.
Thomas Earl of Effingham. Guilty, upon my Honour.
Benjamin Earl Fitzwalter. Guilty, upon my Honour.
James Earl Waldegrave. Guilty, upon my Honour.
Robert Earl Ker. Guilty, upon my Honour.
William Earl Graham. Guilty, upon my Honour.
Thomas Earl of Pomfret. Guilty, upon my Honour.
George Earl of Macclesfield. Guilty, upon my Honour.
Philip Earl of Harborough. Guilty, upon my Honour.
Philip Earl Stanhope. Guilty, upon my Honour.
William Earl Cowper. Guilty, upon my Honour.
George Earl of Halifax. Guilty, upon my Honour.
John Earl Granville. Guilty, upon my Honour.
Charles Earl of Tankerville. Guilty, upon my Honour.
William Earl of Dartmouth. Guilty, upon my Honour.
William Earl of Strafford. Guilty, upon my Honour.
Robert Earl Ferrers. Guilty, upon my Honour.
Charles Earl of Portmore. Guilty, upon my Honour.
John Earl of Dunmore. Guilty, upon my Honour.
James Earl of Findlater. Guilty, upon my Honour.
William Earl of Home. Guilty, upon my Honour.
William Earl of Sutherland. Guilty, upon my Honour.
George Earl of Cholmondeley. Guilty, upon my Honour.
Francis Earl Godolphin. Guilty, upon my Honour.
John Earl Poulett. Guilty, upon my Honour.
Henry Earl of Grantham. Guilty, upon my Honour.
William Earl of Jersey. Guilty, upon my Honour.
William Henry Earl of Rochfort. Guilty, upon my Honour.
George Earl of Warrington. Guilty, upon my Honour.
Thomas Earl of Scarborough. Guilty, upon my Honour.
Baptist Earl of Gainsborough. Guilty, upon my Honour.
Willoughby Earl of Abingdon. Guilty, upon my Honour.
Augustus Earl of Berkeley. Guilty, upon my Honour.
John Earl of Radnor. Guilty, upon my Honour.
George Henry Earl of Litchfield. Guilty, upon my Honour.
Anthony Ashley Earl of Shaftesbury. Guilty, upon my Honour.
Richard Earl of Burlington. Guilty, upon my Honour.
Charles Earl of Ailesbury. Guilty, upon my Honour.
Francis Earl of Doncaster. Guilty, upon my Honour.
Richard Earl of Anglesey. Guilty, upon my Honour.
John Earl of Sandwich. Guilty, upon my Honour.
Sackville Earl of Thanet. Guilty, upon my Honour.
Philip Dormer Earl of Chesterfield. Guilty, upon my Honour.
Daniel Earl of Winchelsea and Nottingham. Guilty, upon my Honour.
Harry Earl of Stamford. Guilty, upon my Honour.
Charles Earl of Peterborough and Monmouth. Guilty, upon my Honour.
John Earl of Westmorland. Guilty, upon my Honour.
Edward Earl of Warwick and Holland. Guilty, upon my Honour.
James Earl of Northampton. Guilty, upon my Honour.
Brownlow Earl of Exeter. Guilty, upon my Honour.
James Earl of Salisbury. Guilty, upon my Honour.
Henry Bowes Earl of Suffolk and Berkshire. Guilty, upon my Honour.
Henry Earl of Lincoln. Guilty, upon my Honour.

Henry Earl of Pembroke and Montgomery. Guilty, upon my Honour.
Edward Earl of Derby. Guilty, upon my Honour.
Thomas Marquis of Rockingham. Guilty, upon my Honour.
William Marquis of Lothian. Guilty, upon my Honour.
John Marquis of Tweeddale. Guilty, upon my Honour.
Henry Duke of Chandos. Guilty, upon my Honour.
Robert Duke of Manchester. Guilty, upon my Honour.
William Duke of Portland. Guilty, upon my Honour.
Thomas Holles Duke of Newcastle. Guilty, upon my Honour.
Evelyn Duke of Kingston. Guilty, upon my Honour.
Peregrine Duke of Ancaster and Kesteven, Lord Great Chamberlain. Guilty, upon my Honour.
Archibald Duke of Argyll. Guilty, upon my Honour.
John Duke of Montagu. Guilty, upon my Honour.
John Duke of Rutland. Guilty, upon my Honour.
Charles Duke of Marlborough. Guilty, upon my Honour.
John Duke of Bedford. Guilty, upon my Honour.
Thomas Duke of Leeds. Guilty, upon my Honour.
Charles Duke of Bolton. Guilty, upon my Honour.
Charles Duke of St. Alban's. Guilty, upon my Honour.
Charles Noel Duke of Beaufort. Guilty, upon my Honour.
Charles Duke of Richmond. Guilty, upon my Honour.
Charles Duke of Grafton, Lord Chamberlain of his Majesty's Household. Guilty, upon my Honour.
William Duke of Devonshire, Lord Steward of his Majesty's Household. Guilty, upon my Honour.
John Earl Gower, Lord Privy Seal. Guilty, upon my Honour.
Lionel Cranfield Duke of Dorset, Lord President of the Council. Guilty, upon my Honour.
 Then the Lord High Steward, laying his Right Hand upon his Breast, said ;
Lord High Steward. My Lords, I am of Opinion, that *Arthur Lord Balmerino* is guilty of the High Treason whereof he stands indicted, upon my Honour.

Lord High Steward. Your Lordships have unanimously found, that *Arthur Lord Balmerino* is guilty of the High Treason whereof he stands indicted: Is it your Lordships Pleasure, that he should be called in, and acquainted therewith?

Lords. Ay, Ay.

Proclamation was then made for the Lieutenant of the *Tower* to bring the Prisoner to the Bar: Which was done in the same Order as before; and afterwards Proclamation made for Silence, as usual.

Lord High Steward. *Arthur Lord Balmerino*, The Lords have considered of the Charge of High Treason which has been brought against you; they have likewise considered the Evidence, and every thing which your Lordship has alleged in your Defence; and, upon the whole Matter, their Lordships have unanimously found, that you are guilty of the High Treason, whereof you stand indicted.

Lord President. My Lords, I move your Lordships to adjourn to the Chamber of Parliament: Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Lords returned, in the Order beforementioned, to the Chamber of Parliament: And the House being there resumed;

Ordered, That the said Earls of *Kilmarnock* and *Cromertie*, and *Lord Balmerino*, should be remanded Prisoners to his Majesty's *Tower of London*, there to be kept in safe Custody; and that they should be brought to the Bar of the House in *Westminster Hall* on *Wednesday* next, at Eleven of the Clock in the Forenoon, that their Lordships might proceed in order to Giving of Judgment upon them.

Wednesday, July 30, 1746. The Second Day.

THE Lords and others came from the Chamber of Parliament into *Westminster Hall*, in the same Order as on *Monday* last; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges may be covered ?

Then the Serjeant at Arms made Proclamation for Silence, as usual ; and afterwards the following Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes ! Lieutenant of the *Tower of London*, bring forth your Prisoners, *William Earl of Kilmarnock*, *George Earl of Cromertie*, and *Arthur Lord Balmerino*, to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the *Tower* brought the Prisoners to the Bar in the like Form as before ; and then they kneeled down.

Lord High Steward. Your Lordships may rise.

The Serjeant at Arms made Proclamation for Silence, as usual.

Mr. Attorney General. My Lords, it appears, That the Three Noble Lords at the Bar have been severally indicted for High Treason, in levying War against his Majesty. They have severally been arraigned ; and, to their Indictments, Two of the Noble Lords, the Earls of *Kilmarnock* and *Cromertie*, have pleaded Guilty ; and the other, my Lord *Balmerino*, has pleaded Not guilty, and put himself upon his Trial by his Peers. As to the Two Noble Lords, who have pleaded Guilty, I pray your Lordships Judgment against them, according to that Confession ; and, as to the Lord *Balmerino*, who hath pleaded Not guilty, and put himself upon his Trial by his Peers, your Lordships, upon hearing the Evidence, having found him Guilty, I also pray your Lordships Judgment accordingly against him.

Lord High Steward. *William Earl of Kilmarnock*, you stand indicted of High Treason, in levying War against his Majesty ; to which you have pleaded Guilty, and are thereby convicted : What has your Lordship to say, Why Judgment of Death should not pass upon you, according to Law ?

Here the Lord High Steward asked Leave to go down to the Table : Which being done ; Proclamation was made for Silence, as usual.

Earl of Kilmarnock.

My Lords,

I Shall not attempt to say any thing in Justification of a Crime, which is of too heinous a Nature to be vindicated ; and which any Endeavour to excuse would rather aggravate than diminish. With unfeigned Humility I am ready to submit to the Sentence I am too conscious I have deserved. I have already owned myself guilty ; and, covered with Confusion and Grief, I throw myself at his Majesty's Feet for Mercy.

I shall plead no Excuse for my Behaviour, in a Circumstance which makes me so much the more unhappy, as it has effaced my former Character, and blotted out the Memory of my constant Attachment to his Majesty's Interest all the preceding Part of my Life.

But, if a Man's former uniform Conduct can be any Evidence of his Principles, and Way of Thinking, I may appeal to mine. My Lords, I appeal to the World, if ever any Sentiment, of the Nature of the Crime I am now arraigned for, ever appeared in it ; or if the contrary was not very conspicuous through my whole Life and Conversation.

My Sphere of Action, indeed, was narrow ; but, as much as I could in that Sphere, it is well known, I always exerted myself to the utmost in every Part of his Majesty's Service I had an Opportunity to act in, from my first Appearance in the World, to the Time I was drawn into this Crime, for which I now appear before your Lordships ; in which I did not engage till very late, not till many Weeks after the Battle of *Preston*.

While I was engaged, it was my constant Care, as far as it lay in my Power, to protect and prevent any Injuries to his Majesty's faithful Subjects in their Persons, Houses, or Estates : For the Truth of which I can appeal to every Town and Country, through which I passed, or at any time halted in.

I had the same Regard for the Prisoners that were taken : And, I believe, Officers, private Men, and others, will vouch for me, That they had better Usage, and their Condition was rendered more supportable, through my Means, though I never had any particular Charge of them. I must at the same time own, that all I did, or could do, in this Way, for the Service of particular Persons, is no Atonement for the Blood I have been accessory to the Spilling of ; nor do I plead it as such, or at all in Defence of my Crime.

I have a Son, my Lords, who has the Honour to carry his Majesty's Commission ; whose Behaviour, I believe, will sufficiently evince, that he has been educated in the firmest Revolution Principles, and brought up with the warmest Attachment to his Majesty's Interest, and the highest Zeal for his most Sacred Person, and the Title of his Illustrious House to the Crown of these Realms.

That

That he was impressed with a firm and settled Opinion, That the Revolution was just and necessary; and that Civil and Religious Liberty and Property cannot be secured to the Nation, otherwise than by the strictest Adherence to these Principles, and maintaining and supporting the Succession to the Crown, as it is by Law established, in the Person of his most Sacred Majesty, and his Illustrious House.

It was my chief Care to instruct him in these Principles, from his earliest Youth; and to confirm him, as he grew up, in the Justice and Necessity of them to the Good and Welfare of the Nation. And, I thank God, I have succeeded: For his Father's Example did not shake his Loyalty; the Ties of Nature yielded to those of Duty: He adhered to the Principles of his Family, and nobly exposed his Life at the Battle of *Culloden*, in Defence of his King, and the Liberties of *Britain*; which I, his Unfortunate Father, was in Arms to destroy.

I was instructed in the same Principles myself, from my Infancy, by the best of Fathers, who distinguished himself early on his late Majesty's Accession, by his Zeal and Activity in suppressing the Rebellion in 1715 (in which he contracted his Death, that followed soon after) as was well known then, and may still be remembered by some of your Lordships. I then had the Honour to serve under him, as far as my Years would admit of, in the same Cause which my Family had always been remarkable for supporting, and which I have ever since strictly adhered to, both in my Heart and Practice, till this unhappy Period.

My Lords, I am not one of those dangerous Persons, who can raise a Number of Men when they will, and command them on any Enterprize they please: My Interests lie on the South Side of *Forth*, in the well inhabited and well affected Counties of *Kilmarnock* and *Falkirk*, in the Shires of *Ayr* and *Stirling*. I have the Honour to speak to those who know the Map, the Situations of these Countries, and the Dispositions of their People: These Places are so well affected (and, perhaps, partly thro' my Means) that any Influence I, or any other, could have on them to the contrary, would be very small; and if I could have had any, I did not use it on this Occasion. Tho' I was, in the Months of *December* and *January* last, some Weeks at *Falkirk*, I did not raise a single Man out of it; and tho', immediately before that, I was a Week at *Glasgow*, a few Miles from *Kilmarnock*, I brought no Body from thence. These last, indeed, were much strengthened in their loyal Principles by my Father's long Residence, and by my being much among them; and I used my Endeavours, with Success, to confirm them in those Sentiments, in a Visit I made them last *September*; when I passed some Days with them, about the Time of and after the Battle of *Preston*: At that Time I got them put in as much Readiness to act for his Majesty's Service, as the Law would then admit of; and procured their settling a Correspondence with their neighbouring Boroughs of *Ayr* and *Irvine*, for their common Defence: Which had so good an Effect, that the Town of *Kilmarnock* alone had soon a good Body of Militia on Foot, which marched into *Glasgow* the Beginning of Winter.

I cannot omit to inform your Lordships, That, at the Battle of *Culloden*, I not only surrendered myself, but I surrendered when it was very easy for me to have escaped, as all that Body did with whom I was when they gave Way. Lord *Ancrum*, to whom I made my Surrender, can acquaint your Lordships, That, when I came up to him, I was quite alone, at a very great Distance from those I had left; and that I neither was running, nor pursued by any Enemy. But tho' I could have escaped, I did not choose it; because the Consequences, in an Instant, appeared to me more terrible, more shocking, than the most painful or ignominious Death. To throw myself into the Hands of a Foreign Power, the natural Enemy to my Country, with whom to have Merit, I must persist in continued Acts of Violence to my Principles, and of Treason and Rebellion against my King and Country; I had already been too far engaged with those, who were encouraged by that Power, to think of continuing in so criminal an Error; and therefore I chose to surrender, and commit myself to his Majesty's Mercy.

I beg leave to repeat what I said before, That I did not mean to advance any thing in Excuse, or even in Mitigation, of my Crime: I only pray to be looked on, by your Lordships, as an Object of his Majesty's Compassion; and, if I am so happy, I beg leave to implore your Lordships Intercession with his Majesty for Mercy, in my Behalf. It is your Lordships Intercession, and that of my Countrymen alone, that I implore. I heard there was an Offer of Mediation made by a Foreign Prince at War with his Majesty; and I heard it with an Indignation that ought to fire the Heart of every *Briton*, when a *French* King dares attempt to direct, or in any respect influence, the Counsels or Determinations of a King of *Britain*; or presume to interpose between his Majesty, and his offending Subjects. I was but too far drawn in, and unhappily engaged, with those, who were assisted and influenced by that Prince; and I never can sufficiently testify my Sorrow and Repentance for it: But I would look on it as the highest Aggravation of my Crime, to hope, or even to wish, for Favour through his Office, by whose Means chiefly, I believe, they were misled, with whom I was accessary to the disturbing the Peace of these Nations, and swerving from my Duty and Allegiance to his Majesty, which all the former Part of my Life I had kept inviolable.

It is by *Britons* only, that I pray to be recommended to a *British* Monarch. If his Majesty shall be pleased, from the steady Loyalty of my Family, from my Father's past Services, from my own constant Adherence to his Majesty's Interest, from my present Anguish for having ever been concerned in this unnatural Rebellion, and from my undissembled Sorrow and Remorse for it, which must attend me to my last Moments: If from these, but much more from his own unbounded Mercy, my Royal Master shall incline to spare that Life which I have justly forfeited, let me owe it to his Majesty through the Intercession of your Lordships, who are Witnesses to my Grief and Repentance.

But if Justice will not allow of Mercy, my Lords, I will lay down my Life with Patience and Resignation: My last Breath shall be employed in the most fervent Prayers for the Preservation and Prosperity of his Majesty, and his August House, and to beg his Forgiveness, and the Forgiveness of my Country.

Lord High Steward. George Earl of Cromertie, You stand indicted of High Treason, in levying War against his Majesty; to which you have pleaded Guilty, and are thereby convicted: What has your Lordship to say, Why Judgment of Death should not pass upon you, according to Law?

Earl of Cromertie.

I Have now the Misfortune to appear before your Lordships, guilty of an Offence of such a Nature, as justly merits the highest Indignation of his Majesty, your Lordships, and the Publick: And it was from a Conviction of my Guilt, that I did not presume to trouble your Lordships with any Defence. As I have committed Treason, it is the last Thing I would mean to justify it: My only Plea shall be, your Lordships Compassion; my only Refuge, his Majesty's Clemency.

Under this heavy Load of Affliction, I have still the Satisfaction, my Lords, of hoping, that my past Conduct, before the Breaking out of the Rebellion, was irreproachable, as to my Attachment to the present happy Establishment, both in Church and State: And, in Evidence of my Affection to the Government, upon the Breaking out of the Rebellion, I can appeal to the then Commander in Chief of his Majesty's Forces at *Inverness*, and to the Lord President of the Court of Session in *Scotland*, who, I am sure, will do Justice to my Conduct upon that Occasion.

But, my Lords, notwithstanding my determined Resolution in Favour of the Government, I was most unhappily seduced from that Loyalty in an unguarded Moment, by the Arts of desperate and designing Men: And it is notorious, my Lords, that no sooner did I awake from that Delusion, than I felt a Remorse for my Departure from my Duty; but it was too late.

Nothing now, my Lords, remains, but to throw myself, my Life, and Fortune, upon your Lordships Compassion; but those, my Lords, as to myself, are the least Part of my Misery.

I have involved an innocent Wife (no Party to my Guilt) and, with her, an unborn Infant, to share its Penalty: I have involved my eldest Son, whose Infancy, and Regard to his Parent, hurried him down the Stream of Rebellion: I have involved also Eight innocent Children, who must feel their Parent's Punishment, before they know his Guilt.

Let them, my Lords, be Pledges to his Majesty; let them be Pledges to your Lordships; let them be Pledges to my Country; for Mercy: Let the silent Eloquence of their Grief and Tears, let the powerful Language of innocent Nature, supply my Want of Eloquence and Persuasion: Let me enjoy Mercy no longer than I deserve it; and let me no longer enjoy Life, than I shall endeavour to efface the Crimes I have been guilty of. Whilst I thus intercede for your Lordships Recommendation to his Majesty for Mercy; let my Remorse for my Guilt, as a Subject; let the Sorrows of my Heart, as a Husband; let the Anguish of my Mind, as a Father; speak the rest of my Misery! Your Lordships are Men, you feel as Men; but may none of you ever suffer the smallest Part of what I suffer!

But, after all, if my Safety shall be found inconsistent with that of the Publick, and nothing but my Blood thought necessary to atone for my unhappy Crimes; if the Sacrifice of my Life, my Fortune, and Family, are judged indispensable for stopping the loud Demands of publick Justice; if, notwithstanding all the Allegations that can be urged in my Favour, the bitter Cup is not to pass from me; not mine, but thy Will, O God, be done!

Lord High Steward. Arthur Lord Balmerino, When you were last at this Bar, I acquainted your Lordship, That, upon your Trial, your Peers had unanimously found you guilty of the High Treason of which you stand indicted; whereby you are convicted: What have you to say, why Judgment of Death should not pass upon you, according to Law?

Lord Balmerino. My Lords, I have here a Paper in my Hand, which says; There are some Reasons, why Judgment should not pass against me. I desire your Lordships will let it be read.

Lord High Steward. Will your Lordship please to read it yourself?

Lord Balmerino. I desire your Lordships would let it be read.

Lord High Steward. My Lords, This Paper, which is offered by my Lord *Balmerino*, cannot be read at the Table; but your Lordships may give Leave, that a Clerk may go down to the Bar, and read it for the Prisoner.

Lords. Ay, ay.

Clerk of the Crown reads the Paper, viz:

July 29th, 1746.

IT is conceived, that the late Act of Parliament, empowering his Majesty to transport such as are taken in Arms from one County to another, where they may be tried by the Course of the Common Law, did not take place, till after the Time that the Facts, implying Treason, were actually committed by the accused Prisoners; and, if so, the Grand Jury of *Surry*, or of any other County whatsoever, where these Acts of Treason are not alleged to have been committed, could not, agreeable to Law, find Bills against such Prisoners: And it may, on that score, be prayed, That the Indictment be quashed, or that an Arrest of Judgment be thereupon granted.

Nat. Williamson.

If the Bill, found by the Grand Jury, has any Flaw, so as to make it illegal, all the Superstructure falls of Course.

Nat. Williamson.

Lord High Steward. What has your Lordship to offer upon this Paper?

Lord Balmerino. I say, my Lords, if the Grand Jury of the County of *Surry* had not Power to find a Bill of Indictment against me, I can't have Judgment pass against me; for I can't see, how the Indictment can be good.

Lord High Steward. Has your Lordship any thing more to offer?

Lord Balmerino. No, my Lords,

Lord High Steward. Your Lordships hear what is alleged by my Lord *Balmerino*.

Earl of Bath. I desire my Lord *Balmerino* may be asked, Whether he knows, that he is intitled to have Counsel, if he thinks fit.

Lord High Steward. Has not your Lordship been acquainted, before this time, that you were intitled to have Counsel, if you thought fit to apply for it?

Lord Balmerino. Yes, my Lords; I was acquainted some time ago, that I might have Counsel; but I have not had Time to speak to any on this Paper. I received this Paper but within this half Hour, from the Constable of the Tower.

Lord High Steward. If you were told, that you might have Counsel, why did not your Lordship apply for Counsel before?

Lord Balmerino. I told your Lordships the other Day, That I did not know I should have Occasion for Counsel. I have had no Counsel to advise me on this Paper. Do your Lordships think fit to allow me Counsel now?

Lord High Steward. Doth your Lordship now move for Counsel?

Lord Balmerino. Yes, my Lords, I do; upon this Point only.

The Lord High Steward went back to his Chair.

Lord High Steward. My Lords, By the Statute of the Seventh of King *William* the Third, for regulating Trials in Cases of High Treason, my Lord *Balmerino* might have had Counsel assigned him by your Lordships to make his full Defence, if he had thought fit to apply for that Purpose: And as he had long ago, by your Order, a Solicitor assigned him, with Liberty of Access to him at all reasonable Times, he admits, that he was rightly informed concerning that Matter. It seems, his Lordship did not think it proper to apply for Counsel before now, tho' he admitted, on *Monday* last, that he had had the Advice of Counsel upon his Case; but he has now moved your Lordships to assign him Counsel, to speak to one particular Point, offered by him in Arrest of Judgment. As this is the State of the Proceeding, it is proper for your Lordships Consideration; Whether, before you appoint Counsel to argue a particular Point, you will not have that Point so far opened, as to see, whether there is any Colour in it, or not. This will best appear, by hearing one of the King's Counsel state the Matter upon the Act of this Session of Parliament, referred to by the Paper, which was just now read; and then possibly my Lord himself may be so well satisfied, as not to insist on having Counsel assigned to argue it.

Duke of Newcastle. As the Prisoner at the Bar, made his Objection, and moved in Arrest of Judgment, I think one of the King's Counsel ought to have Liberty to be heard to that Matter. Your Lordships will then see, what Weight there is in the Objection insisted on by the Prisoner, and be the better able to determine about assigning Counsel to argue it. I am therefore of Opinion, that the King's Counsel should be heard in the Manner proposed by my Lord High Steward.

Earl Granville. By the known Rules and Usage of Parliament, there can be no Debate in this Place; and therefore I move your Lordships to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

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Lords. Ay, ay.
Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the same Order they came down; and, after some time, the House was adjourned again into *Westminster Hall*; and the Peers being there seated, the Lord High Steward in his Chair, and the House resumed, the Serjeant at Arms made Proclamation for Silence, as usual.

Lord High Steward. My Lord *Balmerino*, The Lords have, in their House above, unanimously come to this Resolution, That I should ask your Lordship, Whether you do now desire, that Counsel should be assigned you; and that I should acquaint you, that, in case you do desire it, their Lordships will assign you such Counsel, as you shall think fit to propose.

Lord Balmerino. Yes, my Lords; I do.

Lord High Steward. What Counsel does your Lordship desire should be assigned you?

Lord Balmerino. Mr. *Wilbrabam* and Mr. *Forrester*, my Lords.

Lord President. I move, That your Lordships will adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Lords went back, in the Order beforementioned, to the Chamber of Parliament:

And the House being there resumed;

Ordered, That Mr. *Wilbrabam* and Mr. *Forrester* be assigned Counsel for the Lord *Balmerino*, as desired; and that they may have Access to him at all seasonable Times.

Ordered, That the Earls of *Kilmarnock* and *Cromertie*, and the Lord *Balmerino*, be remanded Prisoners to his Majesty's *Tower of London*, and there kept in safe Custody, until the further Order of this House.

Ordered, That this House will proceed further, in order to the giving Judgment against the said Lords, on *Friday* next, at Eleven of the Clock; and that they be then brought to the Bar of this House, in *Westminster Hall*, for that Purpose.

Friday, August 1st, 1746.

THE Lords, and others, came from the Chamber of Parliament into *Westminster Hall*, in the same Order as on *Monday* last; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, The House is resumed.

Is it your Lordships Pleasure, that the Judges have Leave to be covered?

The Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation;

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower of London*, Bring forth your Prisoners, *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, to the Bar, pursuant to the Order of the House of Lords.

The Deputy-Governor of the *Tower* brought the Prisoners to the Bar, in the like Form as before; and then they kneeled down.

Lord High Steward. Your Lordships may rise.

Mr. *Wilbrabam* and Mr. *Forrester*, the Counsel assigned to the Lord *Balmerino*, attended.

Lord High Steward. My Lord *Balmerino*, when you were last at this Bar, you thought fit to move in Arrest of Judgment; and desired, that Counsel might be assigned you: Whereupon the Lords have been pleased to assign you such Counsel as you proposed. Does your Lordship now desire, that your Counsel may be heard?

Lord Balmerino. As your Lordships have been pleased to allow me Counsel, I have advised with them; and my Counsel tell me, There is nothing in that Paper, which I delivered in on *Wednesday* last, that will be of any Use to me: So I will not give your Lordships any further Trouble about it.

Lord High Steward. If I understand your Lordship right, you do not desire your Counsel should speak to that Matter.

Lord Balmerino. No, my Lords.

Lord High Steward. Do you desire your Counsel should be heard?

Lord Balmerino. I desire they should not plead.

Lord High Steward. My Lords, though the Prisoners have already been asked what they had to say, why Judgment should not pass upon them according to Law; yet, as they are now brought

brought up at a subsequent Day, it is the regular Course, to ask them the same Question over again; because something material may possibly have arisen or occurred since the former Day.

William Earl of Kilmarnock. Has your Lordship any thing further to say, why Judgment of Death should not pass upon you, according to Law?

Earl of Kilmarnock. No, my Lords; I have nothing farther to offer.

Lord High Steward. *George Earl of Cromertie,* Has your Lordship any thing further to say, why Judgment of Death should not pass upon you, according to Law?

Earl of Cromertie. No, my Lords; I have nothing further to trouble your Lordships with.

Lord High Steward. *Arthur Lord Balmerino,* Has your Lordship any thing further to say, why Judgment of Death should not pass upon you, according to Law?

Lord Balmerino. No, my Lords; I only desire to be heard a Moment. My Lords, I am very heartily sorry, that I should take up so much of your Lordships Time, and give you so much Trouble: It was not to delay Time, or to gain a few Days; but only, as I believed there was something in the Objection that would do me Service; and I beg your Lordships Pardon for the Trouble I have given you.

My Lords, I acknowledge my Crime, and I beg your Lordships will intercede with his Majesty for me.

Lord High Steward. Make Proclamation for Silence whilst Judgment is giving.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King, doth strictly charge and command all manner of Persons to keep Silence whilst Judgment is giving, upon Pain of Imprisonment.

Lord High Steward.

William Earl of Kilmarnock, George Earl of Cromertie, Arthur Lord Balmerino,

IN the Course of this Solemn Proceeding, you have already been acquainted, That you stand convicted of the High Treason charged upon you, by the several Indictments, on which you have been arraigned.

By this Conviction it is now finally determined, That your Lordships are guilty of that Crime, which not only the Laws of *Great Britain*, but of all other Countries, for the wisest Reasons, adjudge to be the highest.

As it gives the deepest Concern, to every one of my Lords your Peers, to find Persons of your Birth and Quality stained with so foul an Offence; so it must give them some Satisfaction, that all of you, in effect, have confessed it; Two of your Lordships, by expressly Pleading Guilty upon your Arraignment; and the other, by openly declaring himself satisfied with the Determination of This House, upon the only Point on which his Defence was rested. Charity makes one hope, that this is an Indication of some Disposition to that Repentance, which your Guilt so loudly calls for.

You, my Lord *Balmerino*, have since moved in Arrest of Judgment; and their Lordships were pleased to assign the Counsel you desired, to support that Motion: But, upon advising with your Counsel, you have now voluntarily at the Bar withdrawn it, as being wholly without Foundation.

To attempt to aggravate Crimes of so deep a Dye, and in themselves so incapable of Aggravation, against Persons in your unhappy Circumstances, would be a vain, as well as a most disagreeable Task. And yet the Duty of that Place, in which I have the Honour to sit, requires that I should offer some Things to your Consideration, to explain more fully the Necessity of that Justice, which is this Day to be administered, and to awaken in your Minds a due Sense of your own Condition.

If any Rebellion can be heightened by the Circumstances attending it, it is That in which your Lordships have been engaged: A Rebellion against a King, celebrated through the World for his mild and gracious Government; the whole Series of whose Reign has been distinguished by the strictest Adherence to the Laws, and the most indulgent Care of the Rights of his People; unblemished with any single Instance of an Attempt or Design to violate either.

To overturn the Government of such a King, you took Arms; and, in Consequence of this, to destroy the purest Religion, and subvert the best Constitution, formed and established upon the justest Balance of Prerogative in the Crown, and Liberty in the Subject, for the Preservation of the Whole.

What did your Lordships, who profess the Protestant Religion, and claim the Benefits of this Constitution, seek to introduce in the room of these invaluable Blessings? In Religion, Popery, attended with its Train of Superstitions, and inhuman Principles of Persecution; in Government,

Government, Despotism and Tyranny; and, to cement and support this horrid System, an abjured Pretender, deriving his Principles of Religion and Civil Policy from *Rome* and *France*.

When I name *France*, I find myself obliged to remind your Lordships of one Circumstance, which it will become you to reflect upon in your most serious Moments. The Time you chose to arm against your Country, was, whilst it stood engaged in a just and necessary War against that Crown, and *Spain*; a War, to preserve its own Commerce and Independency, and its antient natural Allies. Though some of your Lordships have thought it proper, at this Bar, to disclaim that Connexion, or any Advantage from it; yet, with that ambitious and incroaching Power, you avowedly joined yourselves; by this Aid, you endeavoured to effect the dreadful Change you meditated; and, to such a Master, to enslave this free Nation.

Nor were the other Countries of *Europe*, which have united themselves against the pernicious Views of *France*, less essentially, though more remotely, interested in the Event. From *Great Britain* they derived their chief Assistance in this War: In her centred their Hopes of Support: But the Contrivers of this Scheme laid the Ax to the Root of the Tree; and, by endeavouring to deliver up this Kingdom a Province to *France*, strove to cut off that Resource, without which the Cause of public Liberty must have sunk for ever.

Thus widely spread were the Calamities, which this Rebellion was formed to introduce. By calling off the Arms of *Great Britain* to her necessary Self-defence, some Progress was made towards effectuating one Part of the intended Mischief. How far it may be retrieved, and in what Manner, is still in the Womb of Time, and in the Hands of Providence: But is it not astonishing, that Men, who call themselves *Britons* and *Protestants*, should become the Dupes and Abettors of so execrable a Design? A Design to erase the very Foundations of true Religion and Freedom, and to turn the Riches and Strength of this Kingdom, through a Course of Ages so differently employed, into Instruments of the common Slavery.

After all this, to mention the Plundering and Devastation of particular Towns and Counties; the Miseries brought upon private Persons and Families; or the many Murders committed (for the Death of every loyal Subject killed in this Rebellion was a Murder); to mention these Things, though most important and moving in themselves, after the other more extensive Considerations, would make them appear of less Weight.

Some of your Lordships, in what you have been pleased to offer for yourselves, have urged several Topics to excite Mercy and Compassion. Those, if of any Moment, are proper only for that Place, where the Seat of Mercy must be acknowledged to be fixed. But, when Arguments of Compassion have been urged in Behalf of the Guilty, let us balance those Arguments with a becoming Compassion for our Country, for those who have suffered innocently by the Miseries which this Rebellion brought upon it, and for those who died gloriously in its Defence.

Give me Leave to urge this a little further. Even the Sufferings of those, who so far forgot their Allegiance, as to adhere to, or favour, this impious Cause, are in Justice to be charged only to the Account of such as fomented and supported it. They who take Arms against a lawful established Government, create the Necessity of all Acts requisite to be done on the Side of that Government, in order to repel and subdue them; or which, in the Nature of Things, become unavoidable in the Course of suppressing them.

Upon such a Subject it is more difficult to stop, than to enlarge. But, whilst I am endeavouring to raise in your Minds a just Sense of the many Evils involved in your Crimes, permit me to intreat your Lordships to deal impartially with yourselves, and to consider seriously, what could be your Temptation to commit them.

Every one of you enjoyed the common Benefits of that legal and mild Government, which, in Violation of the most solemn Oaths, you sought to destroy; and some of you had received particular Advantages from it. You, my Lord *Kilmarnock*, and my Lord *Cromartie*, have thought fit to appeal to your former Conduct, as a Proof of your good Principles for the Support of the Revolution, and of our present happy Establishment. With real Grief I lament that you ever deviated from those Sentiments. If, as your Lordships would have us believe, they were sincere, and proceeded from the Heart, What could possibly be your Inducement to this sudden Apostasy? Your Lordships have left that a Blank in your Apologies; and I choose rather to leave it to be filled up by the Constructions of others, than to supply it myself.

Thus much I am warranted to say: No glittering Prospect of Success in the Beginnings of this Rebellion could tempt you. On the one hand, those Beginnings were so weak and unpromising, as to be capable of seducing none, but the most infected and willing Minds, to join in so desperate an Enterprize. On the other hand, it was impossible even for the Party of the Rebels to be so inconsiderate or vain, as to imagine, that the Body of this free People, blest in the Enjoyment of all their Rights both Civil and Religious under his Majesty's Protection; secure in the Prospect of transmitting them safe to their Posterity, under the Protestant Succession in his Royal House (of which they see so many illustrious Branches) I say, it was impossible that they could ima-

gine, the Body of this free People, under these Circumstances, would not rise up, as one Man, to oppose and crush so flagitious, so destructive, and so unprovoked an Attempt.

Happy is it for ourselves, happy for our Posterity, that this was verified by the Event. The Rebels soon saw his Majesty's faithful Subjects, conscious both of their Duty and Interest, contending to outdo one another in Demonstrations of their Zeal and Vigour in his Service. The Merchants and Trading Part of this great Metropolis, one of the most useful and respectable Branches of the Community, to their lasting Honour, associated themselves, at the Risque of their private Fortunes, to support the publick Credit of their Country. Men of Property, of all Ranks and Orders, crouded in with liberal Subscriptions, of their own Motion, beyond the Examples of former Times, and uncompelled by any Law; and yet in the most legal and warrantable Manner, notwithstanding what has been ignorantly and presumptuously suggested to the contrary. The Clergy, with a Zeal becoming their holy Function, regulated by Christian Charity, instructed their Hearers by their Doctrine, and led them by their Example, in Defence of the Crown, and of our common Liberties; of this Reformed Church, and consequently of the Reformation itself.

The Rebels soon saw many of the Nobility and Gentry, from amongst the first Families, the greatest Estates, and the best Blood in the Kingdom, surrounding the Throne, soliciting to be permitted to hazard their Lives in this glorious Cause, and to be authorized, at their own Expence, to raise Forces for the Support of it.

But, above all, they saw both Houses of Parliament, the Great Council of the Nation, the Representative Body of this People, warmed with a truly *British* Spirit, and treading in the Steps of their Ancestors, overcoming all Difficulties, and unanimously concurring in every Measure to strengthen the King's Hands, and to maintain that Government, on which the very Being of Parliaments, and the Preservation of this limited Monarchy, depend.

If these Enemies of our Peace had formed to themselves any false Hopes of contrary Appearances, it must be owing to the highest Degree of Infatuation, that they were not soon convinced of their Mistake. Great Reason have we to offer up our Thanks to Heaven, that they have been effectually disappointed. Even your Lordships, if you will allow yourselves to weigh your own Case in the just Balance of Religion and Conscience, will find Cause to be thankful, that the Measure of your Guilt was not suffered to be filled up and enhanced by the final direful Success of it.

If, from any unforeseen Accidents, not uncommon in military Operations, those delusive Hopes were for some time kept alive, it seems to have been judicially designed by Providence to render the more signal that Vengeance, which was reserved for them at the Battle of *Culloden*. How much was owing, on that memorable Day, to the Bravery and Discipline of his Majesty's Troops, to the animating Example, the intrepid Valour, and the wise Conduct of a Prince descended from him, is so deeply engraven on the Heart of every Member of this Great Assembly, that I could only repeat what their own grateful Minds have already suggested to themselves, and represented to the Throne.

Then was experienced how much that Courage, which Virtue, true Loyalty, and the Love of our Country, inspire, is superior to the Rashness and false Fire of Rebellion, accompanied with the Terrors of Guilt.

I will add no more. It has been his Majesty's Justice to bring your Lordships to a legal Trial; and it has been his Wisdom to shew, that, as a small Part of his National Forces was sufficient to subdue the Rebel Army in the Field, so the ordinary Course of his Laws is strong enough to bring even their Chiefs to Justice.

What remains for me, is a very painful, though a necessary Part. It is, To pronounce that Sentence, which the Law has appointed for Crimes of this Magnitude; — a Sentence full of Horror! such as the Wisdom of our Ancestors has ordained, as One Guard about the Sacred Person of the King, and as a Fence about this excellent Constitution, to be a Terror to Evil-doers, and a Security to them that do well.

The Judgment of the Law is, and this High Court doth award;

“That You, *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, and every of you, return to the Prison of the *Tower*, from whence you came; from thence you must be drawn to the Place of Execution; when you come there, you must be hanged by the Neck, but not till you are dead; for you must be cut down alive; then your Bowels must be taken out, and burnt before your Faces; then your Heads must be severed from your Bodies, and your Bodies must be divided each into Four Quarters; and these must be at the King's Disposal.”

“And God Almighty be merciful to your Souls!”

Lord

Lord High Steward. Lieutenant of the *Tower*, Take the Prisoners from the Bar.
Which being done, Proclamation was made for Silence, as usual.

Lord High Steward. My Lords, This Proceeding being at an End, nothing remains to be done here, but to determine the Commission.

Lords. Ay, Ay.

Lord High Steward. Let Proclamation be made for dissolving the Commission of High Steward.

Serjeant at Arms. Oyes, Oyes, Oyes ! Our Sovereign Lord the King does strictly charge and command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our said Sovereign Lord the King ; for his Grace my Lord High Steward of *Great Britain* intends now to dissolve his Commission.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Usher of the Black Rod, upon his Knee, his Grace stood up uncovered ; and, holding the Staff in both his Hands, broke it in two, and declared the Commission to be dissolved ; and then leaving the Chair, came down to the Wool-Pack, and said, Is it your Lordships Pleasure to adjourn to the Chamber of Parliament ?

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Lords and others returned in the same Order they came down.

And the Prisoners were carried back to the *Tower of London*.

F I N I S.

Lord High Steward. Lieutenant of the Tower, Take the Prisoners from the Bar.
Which being done, Proclamation was made for Silence, as usual.
Lord High Steward. My Lords, This Proceeding being as an End, nothing remains to be done
here, but to determine the Commission.

Lord High Steward. Let Proclamation be made for dissolving the Commission of High
Steward.

Subject at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King does hereby charge
and command all manner of Persons here present, and that have here attended, to depart hence
in the Peace of God, and of our said Sovereign Lord the King; for his Grace my Lord High
Steward of Great Britain intends now to dissolve the Commission.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Usher of
the Black Rod, upon his Knee, his Grace stood up uncovered; and, holding the Staff in both his
hands, broke it in two, and declared the Commission to be dissolved; and then leaving the Chair,
came down to the Wool-Pack, and said, My Lords, I have the Pleas to adjourn to the Chamber
of Parliament.



Lord High Steward. This House is adjourned to the Chamber of Parliament.
Then the Lords and others retired in the same Order they came down.
And the Pleas were carried back to the Tower of London.

F I N I S

In Testimony of an Order of the House of
PEERS of the Nineteenth Day of March 1746
I do appoint SAMUEL BILLINGSLEY to Print
the whole Proceedings in the House of Peers
upon the impeachment exhibited by the Knights
Citizens and Burghes in Parliament assembled
in the Names of themselves and of all the Com-
mons of Great Britain against James Lord Lovat
for High Treason; And do forbid any other
Person to Print the same.

Hardwick's C.